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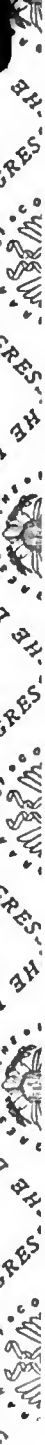
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THE PROHIBITION AMENDMENT

*U. S. States Congress. House, Committee on
the Judiciary.*

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HEARINGS

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. J. Res. 11, 38, 99, 114, 219, and 246

Serial 5

FEBRUARY 12-APRIL 24, 1930

PART 4



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HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS, SECOND SESSION

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THE PROHIBITION AMENDMENT

ADDENDA

[H. J. Res. 11, Seventy-first Congress, first session]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following amendment be, and hereby is, proposed to the States to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:

"ARTICLE —

"SECTION 1. The Congress shall have power to regulate the manufacture, sale, transportation, import, and export of intoxicating beverages, reserving to the respective States the right to fix the alcoholic content of such beverages.

"SEC. 2. The Congress shall fix the minimum alcoholic content of nonintoxicating beverages and any State fixing a greater alcoholic content than such minimum shall do so only under such laws, rules, and regulations as Congress shall make and under such conditions as Congress shall impose to protect and guarantee other States adopting the minimum alcoholic content fixed by Congress from importations, sale, and traffic of such intoxicating beverages from such State."

[H. J. Res. 38, Seventy-first Congress, first session]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by conventions in three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution.

ARTICLE —

SECTION 1. The eighteenth amendment to the Constitution of the United States is hereby repealed.

[H. J. Res. 99, Seventy-first Congress, first session]

JOINT RESOLUTION Proposing an amendment to the eighteenth amendment of the Constitution

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the eighteenth amendment of the Constitution, which shall be valid to all intents and purposes as part of said Constitution in lieu of said eighteenth amendment when ratified by the legislatures of three-fourths of the States:

ARTICLE XVIII

"SECTION 1. After the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within the importation thereof into, the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited, except as provided in section 2 of this article.

"SEC. 2. Congress shall provide by appropriate legislation for the manufacture and transportation of intoxicating beverages and for the sale thereof in packages under a system of governmental permits and restrictions, and provide penalties for the violation of such laws, permits, and regulations: *Provided, however,* That no such permits shall be issued therefor in any State or Territory whose laws prohibit the manufacture, transportation, or sale of intoxicating beverages; nor in any political subdivision of the United States of America (outside of the District of Columbia), until requested by an act of the legislature or referendum vote of such political subdivision.

"SEC. 3. This amendment shall be inoperative unless ratified within ten years of the submission thereof."

[H. J. Res. 114, Seventy-first Congress, first session]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by conventions in three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution.

ARTICLE —

SECTION 1. The eighteenth amendment to the Constitution of the United States is hereby repealed.

[H. J. Res. 219, Seventy-first Congress, second session]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States, providing for a referendum on the eighteenth amendment thereof

** Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:*

“ARTICLE —

“Each State shall submit to the electors thereof at the next general congressional election therein, after three months from the date of the adoption of this amendment, the question whether or not the eighteenth amendment to this Constitution shall be repealed.

“The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

“Each State shall conduct such election therein and determine the result as the law thereof provides or, in the absence of such State law, in such manner as the Congress shall provide.

“On the expiration of the time for such election in all the States the submission of the question shall be complete.

“If a majority of all the people voting thereon vote for the repeal, the eighteenth amendment shall thereupon cease to be a part of this Constitution; but the Congress shall retain power to prohibit the interstate transportation of intoxicating liquors in violation of State laws, and no State shall permit or authorize the conduct of a saloon.”

[H. J. Res. 246, Seventy-first Congress, second session]

JOINT RESOLUTION Proposing an amendment to the eighteenth amendment of the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following amendment to the eighteenth amendment of the Constitution of the United States be, and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:

“ARTICLE 18

“After ‘Section 1,’ strike out all of this section and in place thereof insert the following:

“The Congress shall have the power to regulate or prohibit the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof from the United States and all territory subject to the jurisdiction thereof (for beverage purposes). But such grant of power shall not be construed to require that such regulation or prohibition shall be uniform throughout the United States nor deprive the States of power to impose additional regulations or prohibitions upon such manufacture, sale, transportation, importation, or exportation.”

PITTSBURGH, PA., March 5, 1930.

DEAR MR. GRAHAM: The Declaration of Independence contains the fundamentals of a plan, that, because of the sanctity in which this document is held by the American people, may be given consideration in seeking the solution of a problem fraught with grave danger and serious consequences, and perhaps international or civil strife, or both, before it is settled; for the causes which led up to the Civil War of 1863 were subtle in their inception, coming gradually and with no greater incentive nor momentum than that which now is prevalent

in the United States. This disregard for international and domestic law should not enmesh us until there is no solution except by force.

"When in the course of human events it becomes necessary—the necessity is here—witness the forming of a presidential commission, the calling of conferences to find a solution.

"Men are created * * * with certain inalienable rights * * * among these are life, liberty, and the pursuit of happiness"—it can not be truthfully said that the people of these States are contented and happy under prevailing conditions. "To secure these rights [the right to vote] governments are instituted * * * deriving their powers from the consent of the governed, that when any form of government [sumptuary legislation] becomes destructive to these ends it is the right of the people to alter or to abolish * * * and institute such form as shall seem most likely to effect their safety and happiness."

From the above is based an obligation on the Congress of the United States to submit to the people (see Art. XV, sec. 1, "The right of any citizen of the United States to vote shall not be denied or abridged") the question, prohibition, a sumptuary regulation, that from recorded history and vision of the future, has no place in so noble a document as the American Constitution.

SUGGESTED PLAN

That Congress pass an enabling act, and by that act revert this question to the individual States, that every State in the Union be empowered to submit a referendum at the first possible election on the following questions:

1. The retention of the eighteenth amendment.
2. The application of the Volstead Act.
3. The control, manufacture, sale, and distribution of spirituous liquors by State Government.

4. The establishment of State dispensaries in localities where the majority are affirmative and regulation by issuing individual registered permits.

Localize the problem and local sentiment will solve and enforce.

Sentiment in Maine can not enforce a law in California.

This country has become too vast and sentiment too varied to apply arbitrary Federal regulation of personal conduct in every locality. The largest measure of self-government should be granted the individual States consistent with the unity of the whole. England learned how to rule her colonies after the American Revolution—democracy should absorb the lesson from autocracy.

If the people are given an opportunity to express themselves on these questions they will feel an interest and confidence, which is now lacking, in their Government; evidenced by the indifferent attitude of the mass of American people.

Referendum is fair to all controverters, dry, temperance, or wet—the decision, a safe, sure guide for legislation, a conclusion reached that can not be obtained in any other way.

Respectfully submitted.

J. THOS. JOHNSON.

PITTSBURGH, PA.

CHICAGO, ILL., February 10, 1930.

HON. GEORGE S. GRAHAM,
Chairman of the Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: I am to-day telegraphing you as follows:

"I have been invited to appear before your committee Wednesday, but can not do so. Accordingly I am sending you by special delivery suggestions in support of proposition that eighteenth amendment be amended so as to vest in Congress the power to regulate the liquor traffic. Please consider same."

I inclose the suggestions referred to, to which I have attached a pamphlet prepared by me entitled "More dangerous than slavery," a copy of which I have heretofore sent to each Senator and Congressman. I respectfully request that the suggestions and the pamphlet be submitted to your committee for its consideration.

Thanking you in advance for your courtesy in this matter. I beg to remain

Yours sincerely,

CHESTER E. CLEVELAND.

SUGGESTIONS

(By Chester E. Cleveland)

In support of proposition to amend eighteenth amendment so as to read substantially as follows:

"The exclusive power to tax, license, regulate, or suppress the manufacture, sale, transportation, exportation, and importation of intoxicating liquors shall be vested in the Congress."

I have read some newspaper reports of the address by Hon. James M. Beck on Friday, February 7.

I recognize his eminence as a lawyer and the great weight to which his opinions on constitutional law are entitled.

I also realize that newspaper reports are often inaccurate and misleading; and, in the absence of the full text of his address, I must say that I would be surprised if the newspaper reports thereof are accurate.

However, of necessity, accepting such reports as accurate, for the time being, let me say:

I am particularly interested in the proposition attributed to him by the press, as follows:

"The eighteenth amendment is not self-enforcing; it is up to Congress to determine whether there shall be affirmative legislation for its enforcement; whether there shall be no enforcing statutes; or whether methods of enforcement and actual enforcement shall be left to the States."

Is not this statement inaccurate?

In 12 Corpus Juris I find the following statements at page 729:

"It is within the power of those who adopt a constitution to make some of its provisions self-executing with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * * Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."

At page 732: "Constitutional provisions which in terms forbid the manufacture or sale of intoxicating liquors are self-executing, but provisions making it the duty of the legislature to enact laws submitting questions of local option to a vote of the electors, or declaring that the State shall control the manufacture and sale of intoxicating liquors, under laws to be prescribed by the legislature, are ineffective until aided by supplementary legislation."

Section 1 of the eighteenth amendment is as follows:

"After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within * * * the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Is not this provision plainly and absolutely self-executing, at least to this extent: That any act of Congress or of any State legislature purporting to license, tax, regulate or authorize the manufacture, sale or transportation of intoxicating liquor for beverage purposes would be absolutely void and would be held by the courts to be unconstitutional? That, even if the United States Government should undertake to manufacture, sell, or transport intoxicating liquor for beverage purposes, the courts would be obliged to prevent the expenditure of any money for that purpose upon the ground that such manufacture, sale, and transportation is absolutely prohibited by the first section of the eighteenth amendment?

True, there is a narrow sphere—a penumbra—within which there is a fair doubt as to whether liquor is intoxicating; and, within that narrow sphere, the Congress or legislatures could authoritatively define what is intoxicating liquor. Under the eighteenth amendment, up to the present time, the only question before the court, on this point, has been how low the Congress could go in defining what liquor is intoxicating; and the Supreme Court has held that one-half of 1 per cent in volume is not too low. But when the question comes before the courts how high the Congress can go in declaring liquor not to be intoxicating, an entirely different situation will be presented.

Obviously, a statute declaring whisky, brandy, gin, or rum to be not intoxicating would be held to be void as repugnant to the eighteenth amendment. Would not the court also hold a statute declaring wine or beer containing 10 per cent of alcohol or even 5 per cent to be invalid; especially in view of the definition established by the authorities that intoxicating liquor is liquor that

will intoxicate any person—not every person or the ordinary person—who drinks as much thereof as he has the capacity to consume?

Furthermore, as a practical proposition, how could a statute allowing the manufacture and sale of so-called light wines and beer containing, say, 3 per cent of alcohol, be enforced? Would there have to be an army of prohibition agents to test each drink in order to determine whether it did not contain $3\frac{1}{2}$ per cent or 4 per cent or 5 per cent of alcohol?

The second section of the eighteenth amendment is as follows:

"The Congress and the several States shall have the concurrent power to enforce this article by appropriate legislation."

It is true this sentence gives "power" to the Congress and the several States; and does not, in terms, impose upon either of them the "duty" to enforce the eighteenth amendment by appropriate legislation. But it is a fair, if not conclusive, argument that this power was conferred with the intention that it should be exercised; rather than that its purpose was to vest in the Congress and the States discretion to nullify the eighteenth amendment by the mere nonexercise of this power.

It is probably true that if the Congress or any of the States declined to exercise this power there is no legal procedure by which they could be compelled to do so; but that would be nullification—an ugly word in constitutional law, and if the Congress or any State may nullify the eighteenth amendment by refusing to provide the necessary legal machinery for its enforcement, then it may nullify any other provision of the constitution in the same way, and the constitution instead of being the supreme law of the land, as it is declared to be, would become the supreme law of the land only in such cases as the Congress decides it shall be such supreme law. This would be a death blow to our constitutional form of government.

Furthermore, in considering the practical possibility of effecting the nullification of the eighteenth amendment by repealing all laws enacted to enforce it and refusing to enact other laws in their place, we can not overlook the moral force of the official oath of each United States Senator and Congressman and member of State legislatures, viz, that he will support the Constitution. Is it reasonable to believe that a majority of the Congress, after taking a solemn oath to support the Constitution, which includes the eighteenth amendment, will adopt such action or nonaction as will make the amendment a dead letter? It is far more probable that the necessary two-thirds of the Senate and House of Representatives, would in a much shorter time, take the action necessary to procure the repeal or amendment of the eighteenth amendment so that the present evils could be remedied in a reasonable, constitutional, and legal way, rather than by means of nullification or evasion, which is an illegal and unconstitutional way.

However, assuming that nullification or evasion should be adopted and pursued; would that result in the cure of present evils or an aggravation of them?

As we have seen by section 2 of the eighteenth amendment, it is provided that: "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

Thus, the several States have no more and no less power than the Congress; but precisely the same power. The Congress can not compel the States to enact laws to enforce prohibition any more than the several States can compel the Congress to do so.

Under the eighteenth amendment in its present form, the only power vested in the Congress or in any State is the power to enforce the prohibition of the manufacture, sale, transportation, importation, and exportation of intoxicating liquor. Any law enacted by either the Congress or by any State attempting to license, tax, or regulate the traffic in intoxicating liquor, would be unconstitutional, null and void; and would necessarily be held to be so by the courts.

If Congress would repeal existing enforcement statutes and refuse to enact others in their place and relegate the matter of enforcement to the several States, and each State should enact enforcement statutes, then, instead of having 1 uniform enforcement statute we would have 48 different statutes which in all probability would not be at all uniform. Thus New York might declare liquors with 10 per cent alcoholic content not intoxicating; Pennsylvania 5 per cent; Illinois 3 per cent; Iowa one-half of 1 per cent; and so on, and then there would remain the question for the courts: How much alcoholic content may liquor contain without being intoxicating under the eighteenth

amendment? Surely, it must be admitted that a statute declaring liquor which is manifestly intoxicating not to be intoxicating would necessarily be held by the courts to be unconstitutional and void.

Is it reasonable to believe that existing evils would be cured or even minimized by the General Government abandoning control of the prohibition of the traffic in intoxicating liquor and setting up, in lieu thereof, 48 separate and distinct enforcement agencies each with its army of informers, spies, and prosecutors? At present the State courts can and do devote the major part of their time to the settlement and adjustment of ordinary controversies among the people. Would it not be a calamity to have them handicapped, as the Federal courts are now handicapped, by an immense overload of prosecutions under the eighteenth amendment and statutes passed to enforce the same?

In passing, while not exactly pertinent to the present discussion, let me suggest for consideration, that it would be practically impossible, under the eighteenth amendment, to enforce statutes authorizing the sale of light wines and beer, even if they would be upheld by the courts as not in violation of the eighteenth amendment? Obviously, by the settled law, a statute authorizing, in general terms, the manufacture and sale of "light wines and beer" could only be sustained on the ground that it meant liquor not intoxicating in fact; that is to say, that would not intoxicate any person who would drink such quantity thereof as it was practically possible for him or her to consume. No one would be satisfied with such a statute. The prohibitionists would be dissatisfied because it would be a mere cover under which liquors in fact intoxicating would be manufactured and sold; and the antiprohibitionists would be dissatisfied because what they want could not be lawfully manufactured and sold thereunder.

Suppose, however, a statute should be passed defining as "light wines and beer" liquor containing 3 per cent of alcohol. Spirituous liquors, such as whisky, brandy, rum, and gin, can readily be distinguished from vinous or fermented liquors, such as wine and cider; and both can readily be distinguished from malt liquors, such as beer. But, in practical operation, how can the manufacture and sale of spirituous liquor containing 20 per cent of alcohol be distinguished from that containing 21 per cent of alcohol; or vinous liquor containing 10 per cent of alcohol from that containing 11 per cent of alcohol; or malt liquor containing 3 per cent of alcohol from that containing 4 per cent of alcohol? Especially, in view of the known fact, that the alcoholic content of liquor does or, at any rate, is apt to increase with age. To enforce such laws it would seem to be necessary to have all the liquor in every store gaged from day to day; if, indeed, it would not be necessary to have every drink tested. This would be true, on the assumption that every liquor dealer would honestly try to comply with the law. But when we further consider the known tendency among liquor dealers to fudge somewhat to satisfy the appetites and desires of customers, it is obvious that such laws are utterly impractical of enforcement.

Hence, the hope of getting "light wines and beer" under the eighteenth amendment, in its present form, is an idle dream.

But let us return to the subject matter really under consideration; that is, what would happen if the Congress refused to exercise its power to pass laws to enforce the eighteenth amendment and relegate the powers to do so exclusively to the different States?

It is important to keep in mind that the manufacture, sale, transportation, importation, and exportation of intoxicating liquor is essentially a matter of commerce; and very important evils connected with the liquor traffic, result from commerce with foreign nations and among the several States.

Will it be contended that the Congress should also surrender supposing merely for the sake of argument that it could do so—its power to regulate commerce with foreign nations and among the several States, so far as the liquor traffic is concerned?

If not, how can existing evils be cured by relegating the control of the liquor traffic to the several States?

And assuming the Congress should relegate such power to the several States, then each State could exercise such powers only with respect to its territorial limits; and it would be at the mercy of any other State so far as the importation of liquor is concerned.

Furthermore, if the Congress should abandon its efforts to enforce the eighteenth amendment, the legislatures of the several States would have only precisely the same power within their respective territorial limits as the Congress have over the whole Nation.

As I am informed, New York and Maryland have already refused to exercise their power to enforce or attempt to enforce the eighteenth amendment. Suppose some other States, following the suggested action of the Congress, should also abandon their efforts to enforce the amendment, in its present form, as a hopeless task; while other States would adopt various kinds of enforcement statutes; then, in those states so following the example of the Congress, the liquor traffic, although illegal and prohibited by the Constitution of the United States, would thrive without any regulation at all; since, as we have seen, under the eighteenth amendment, in its present form, there can be no license or regulation of such traffic, but only the suppression of such traffic.

In the case supposed, the other States practically could not protect themselves against the nonaction of the States so following the suggested action of Congress in nullifying the eighteenth amendment by refusing to provide the necessary machinery for its enforcement.

Obviously, the only result would be, not any cure of existing conditions, but the upbuilding and strengthening of the bootleggers' paradise.

I respectfully submit that those who are seeking to remedy the existing evils are doing their cause more harm than good by proposing remedies which contemplate the evasion or nullification of the eighteenth amendment. They should recognize that the eighteenth amendment is now a supreme law of the land; and the only course open to law-abiding citizens is to secure its repeal or amendment in an orderly and legal way as provided in the Constitution. That it may take a long time to do so is not a valid reason against adopting that remedy. Makeshifts and attempts to accomplish anything by evading or nullifying the amendment will accomplish nothing; but will only postpone and delay the real remedy.

The regulation of the liquor traffic is a police regulation. It ought not to be in the Constitution; and the true remedy is to get it out of the Constitution.

It seems to me that the mere repeal of the amendment would be undesirable; because that would restore conditions as they were in the old saloon days, before the amendment was adopted.

Therefore in my pamphlet entitled "More Dangerous Than Slavery" I have suggested that the eighteenth amendment be amended so as to read substantially as follows:

"The exclusive power to tax, license, regulate, or suppress the manufacture, sale, transportation, exportation, and importation of intoxicating liquors, shall be vested in the Congress."

I have sent a copy of this pamphlet to each Senator and Representative. I respectfully ask that it be considered in connection with this communication.

It seems to me my proposed amendment has two advantages:

1. It will vest the discretion to control the liquor traffic in one controlling body, viz, the Congress; and since such control is essentially a matter of commerce it should be so vested. This is particularly so since, if the control should be revested in the several States, one State is practically powerless to protect itself against the action of other States.

2. This question can not be settled by either the fanatical dries nor the rapid wets; but the appeal must be made to the great body of reasonable people who are more concerned in the preservation of our institutions than in either preventing anyone from taking a drink or allowing him to have all he wants without any regulation whatever. Many citizens who would oppose the repeal of the eighteenth amendment because they believe it would restore the saloons as they were before the amendment was adopted would gladly support an amendment which would put the control of the traffic in Congress with power to pass such regulatory laws, from time to time, as they, in their discretion, found to be for the best interests of the entire country. Hence, as it seems to me, we can reasonably expect to procure such an amendment as I have suggested in a much shorter time than we could procure a flat repeal of the amendment.

Let me add that the analogy attempted to be drawn by some statesmen and great newspapers between nullification of the fugitive slave laws and nullification of the eighteenth amendment is peculiarly unfortunate; since the slavery question was settled by war. We want no war arising out of the eighteenth amendment; but to proceed to remedy existing conditions in the orderly way provided by the Constitution.

Respectfully submitted.

CHESTER E. CLEVELAND.

WASHINGTON, D. C., February 27, 1930.

HON. GEORGE S. GRAHAM,

*Chairman Judiciary Committee of the House of Representatives,**Washington, D. C.*

MY DEAR MR. GRAHAM: Since I failed of an opportunity to appear in person before the committee in its hearings on the prohibition question, I should be pleased if you will have the accompanying statement incorporated in the printed record of the hearings; as I believe it to be a constructive contribution on the subject.

Very cordially yours,

A. S. LANIER.

SUBSTITUTE FOR PROHIBITION—STATEMENT BY ALEXANDER SIDNEY LANIER, OF WASHINGTON, D. C.

The primary aims of the prohibitionists were twofold, viz, the abolition of the saloon and enforced total abstinence. The extremity of the measures adopted has defeated both objects and produced the most deplorable results.

To remedy a given condition the evils thereof must be clearly comprehended as well as the objects to be attained. Conceding certain incidental benefits from prohibition, it is, nevertheless, the consensus of thoughtful, intelligent, and unbiased opinion that prohibition has been proven a failure, and that its consequences and effects are a challenge to our social order and governmental authority and stability.

It has been demonstrated that prohibition is not only unenforceable, but that its advocates are unwilling that the Government should go the lengths financially and otherwise in attempts to enforce the same. Instead of promoting temperance, contributing to social order, and the general health, its effects have been the opposite. It is the origin of much of the general lawlessness now prevailing throughout the Nation, and to an ever growing disrespect and disregard for all law and constituted authority.

It has corrupted the youth of the land and practically all public officials having to do with its enforcement. The guardians of the law in our larger cities have been unable to withstand the temptations it offers, and have become demoralized, and almost ceased to function in discharge of their primary duties. By the patronage of the well to do and more or less socially prominent, there has been created and enriched a large and dangerous criminal class that is a menace to the peace, order, and security of every community. It is impairing the moral and spiritual life of the people. It is a disturbing factor in our domestic political life, handicapping the Congress in the discharge of its important legislative functions, interfering seriously with the administration of justice in the courts, and is also a cause of more or less serious friction in our international relations.

Experience has proven that man will accept and submit to prohibition respecting things that are malum in se, like theft, murder, and other things that involve moral turpitude, but not in regard to things that are merely malum prohibitum. As to these he will accept and abide by almost any amount of regulation, but not prohibition. Alcohol is a gift of the Creator. The divine law contains no prohibition against its use, but only against its abuse. Therefore, absolute prohibition against what is not inherently wrong or immoral runs counter to an ingrained perverseness of human nature, namely, to do the thing prohibited; and it is this human trait that accounts for much of the disregard of the law, and should be of primary consideration in all legislation of a so-called sumptuary character. It is a well known fact that thousands of men and women who never drank before prohibition have taken it up since, in perverseness and protest against the law.

A great mistake was made by the advocates of prohibition by insisting it was a moral, and therefore a religious question, when, as a matter of fact, it is neither, but solely a social and economic problem and should be so regarded and dealt with. A most unfortunate result of this position was that it dragged the churches into the muck and mire of politics, greatly to the detriment of their spiritual influence and authority.

Any plan as a substitute for prohibition to be effective and worthy of consideration should have for its primary objects the promotion of temperance, restoration of respect for and observance of the law, the elimination of bootlegging and smuggling, and the other cumulative and destructive evils hereinafter

enumerated, and should be of such a reasonable character as to merit and win the approval and support of the people.

In presenting a plan as a substitute for prohibition it is not practicable to outline a complete draft of appropriate laws on the subject. Only the foundation and general outline can be given as to what such laws should contain. The superstructure and details thereof must be carefully worked out and provided by appropriate legislation. An amendment to the Constitution will, however, be given in full, as it is the first, fundamental, and indispensable step to be taken, and may be briefly stated.

It is generally agreed that the liquor problem is national and can be handled and solved only by the National Government. The eighteenth amendment is an insuperable bar to any practicable change or reform, and must be wholly abrogated. It is upon this hypothesis, and to promote temperance, restore the people's respect for the laws of the land and free the Nation of the recognized and admitted evils of prohibition that there is submitted as a substitute for prohibition the following plan:

" PLAN

"The Congress to propose and submit to the States for ratification an amendment to the Constitution, in abrogation of and substitution for the eighteenth amendment, as follows:

" AMENDMENT —

"SECTION 1. Intoxicating liquors are hereby declared a monopoly of the Government of the United States. The manufacture, importation, distribution, and sale thereof are prohibited except in the manner in this article provided.

"SEC. 2. The Congress shall, as soon as practicable after the ratification of this article, provide for the manufacture, importation, distribution, and sale, by the United States or their agents, of intoxicating liquors, throughout the United States and all territory subject to the jurisdiction thereof for beverage and medicinal purposes, under such regulations and control as the Congress shall prescribe: *Provided*, That any State, or political subdivision thereof with the State's consent, may adopt such prohibition laws respecting intoxicating liquors as it may desire, and when adopted the Congress shall by appropriate legislation cooperate with such State in enforcing such laws by forbidding and preventing the shipment in interstate commerce of intoxicating liquors into such State.

"SEC. 3. Should the laws enacted by the Congress pursuant to this article prove unsatisfactory or ineffective after 10 years trial, of which the Congress shall be the sole judge, then and in that event, the Congress shall have plenary and exclusive power to legislate respecting intoxicating liquors, as it may deem most expedient in the interest of the general welfare; or it may in lieu thereof after the time herein specified, declare by joint resolution said laws a failure, if such be the fact in its judgment, and that it will not legislate on the subject, but will leave each State free to enact such laws thereon as it may desire."

OUTLINE OF LEGISLATION BY CONGRESS TO MAKE THIS AMENDMENT EFFECTIVE

So soon as the above amendment shall have been ratified the Congress shall, after exhaustive hearings and careful consideration, enact the necessary laws to make it effective. These laws should contain, among many other things, the following essential provisions:

Intoxicating liquors of every nature should be declared a monopoly of the Government of the United States. The manufacture, importation, distribution, and sale of intoxicating liquors of whatever kind should be forbidden under the penalties of the act, except by the Government of the United States, or by persons, firms, or corporations, expressly authorized thereto by said Government, as its agent or agents, under its supervision and control.

Provision should be made for the manufacture of liquors either by the Government, or by some of the existing distilleries under Government supervision and control, as investigation may prove most advantageous.

Provision for importation by the Government of such wines and liquors as may not or can not be produced in the United States.

Provision for the distribution and sale of all intoxicating liquors by the Government by and through Government dispensaries or drug stores, as may be found most practicable. All liquors to be guaranteed and sold at prices to

cover all costs of manufacture, purchase from abroad, distribution, sale, supervision, and administration of the law, plus some profit to the Government, but the sales prices should be such as to make bootlegging and smuggling unprofitable.

Provision should be made under proper safeguards for hospitals to keep and dispense liquors in case of necessity, under authority and direction of attending physicians; and also for physicians to issue prescriptions for liquor in emergencies and to bona fide patients.

There should be special provisions for the sale of liquors on American merchant ships, and for wine for sacramental use.

The act should provide for the issuance of permits on application to persons not under 21 years of age to purchase liquors from the Government dispensaries or agencies in original packages not to be opened on the premises. The permit might be got up somewhat after the fashion of a street-car transfer, and should have provision for the name of the permittee, date of purchase of liquor by him, and the quantity and kind of liquor sold him. It should be so prepared that these items may be indicated on the permit by punching holes therein with an appropriate instrument, and also so designed as to prevent its being counterfeited or evaded. The sales agent should be required to keep a duplicate of each permit. The permittee should be required to surrender his permit at stated intervals, or when used up, for a new one, and said permit should be checked against the duplicate in possession of the sales agent. The price of the permit should be nominal but sufficient to cover all costs thereof to the Government. Permits should be subject to cancellation should the permittee be arrested and convicted for drunkenness.

The law should also provide for cooperating with any State in the enforcement of such prohibition laws as it may enact.

Very careful and elaborate provisions should be made for the proper administration, supervision, and enforcement of the act.

The act should contain a penalty clause, making any violation thereof a felony punishable by a fine of not less than \$5,000 and imprisonment for not less than five years.

MERITS OF PROPOSED PLAN

The foregoing plan should commend itself to all reasonable people, who realize the evils of prohibition and wish to see them eliminated, for the following reasons:

It is reasonable in its scope and provisions, and is therefore likely to receive the approval and support of the great majority of the people, without which no law can be enforced.

It enables everyone of proper age, who so desires, to obtain liquors in reasonable quantities, to be drunk only in private. It makes unnecessary and impossible the return of the saloon, eliminates public drinking and treating, and thereby will promote temperance, and restore respect for the laws of the land.

It will destroy the dangerous and unbearable system of espionage that has grown up under prohibition, and the corruption and debauchment of public officials that is now common and scandalously notorious. It will restore to the people their constitutional rights, which have been so ruthlessly and constantly invaded and disregarded by prohibition officials, and a man's home will again become his castle.

It will eliminate smuggling, and the bootlegger who is now menacing the social order and our governmental authority. Under it the fanatic, both wet and dry, who is a nuisance and social plague, will disappear.

Under it crime and the costs thereof will greatly diminish, thereby relieving the congestion in the courts, and enabling them to function more freely and effectively in disposing of the legitimate legal business of the people.

It will take the question of prohibition out of politics, which has so long been the bane of our public life, and will leave our legislative bodies free to legislate upon the important affairs of the States and Nation, and will also improve our international relations.

The proposed amendment permits each State to be wet or dry, as a majority of its people may elect, and at the same time prevents the injustice of some of the States forcing their will upon other States of a different mind and desire, and in which entirely different conditions may prevail. It should, therefore, find no opposition from those States whose people are really dry in sentiment.

Furthermore, as no one not endowed with omniscience, can determine beforehand just how any plan relating to a subject of this nature may work out, it would seem the part of wisdom not to bind the Congress irrevocably to this plan, or to any plan, regardless of its results, as was done in the eighteenth amendment, but to leave it free to deal with the subject as time and experience may dictate, without having to resort to the cumbersome, slow, and difficult method of again amending the Constitution, which should never be amended except in response to some imperative necessity. The proposed amendment therefore, commits the subject wholly and exclusively to the will and judgment of the Congress should the plan prove unsuccessful after a fair trial, within a reasonable time.

It will produce some revenue to the Government in place of the present staggering costs of the utterly futile and fruitless efforts to enforce prohibition, which has been demonstrated to be an unenforceable law.

There will be no justification or excuse for violating the law under this plan, and therefore, the heavy penalty proposed is fully warranted, and will be so recognized by juries called upon to convict for violations of it.

BROOKLYN, N. Y., March 31, 1930.

COMMITTEE ON THE JUDICIARY,

House of Representatives, Washington, D. C.

GENTLEMEN: The members of the national organization committee of the proposed National Temperance League of America add their protest to the others already registered before your committee against the continuance of prohibition in its present form.

We are a nonpartisan and nonsectarian association of young American citizens, of various trades and learned professions, who are pledged to promote true temperance in conformity with the basic principles, true spirit, and original intent of the Constitution of the United States of America. We are opposed to national prohibition under the eighteenth amendment on three fundamental grounds:

1. Prohibition can not produce temperance.
2. Prohibition breeds corruption and crime.
3. Prohibition is un-American.

That prohibition can not produce temperance hardly requires any proof. Everybody knows that it did not stop the people from drinking. Sufficient evidence has been presented before your committee to show that prohibition has not abolished the liquor traffic, but has merely transferred it into the hands of bootleggers and other criminal classes, and that it has not curtailed the drinking appetite and habits of the people. On the contrary, as indicated by the recent polls of the students of Yale University and other educational institutions throughout the country, the young people of America to-day are at least 20 per cent wetter than their parents, which leads to the inevitable conclusion that prohibition tends to create more intemperate generations as it progresses.

That corruption and crime has increased during prohibition is universally admitted. According to official Government reports, there were some 70,000 prohibition cases instituted during the last fiscal year, and some 1,300 murders committed during the decade of its reign. Every law-abiding citizen has become a potential lawbreaker subject to imprisonment and his property subject to confiscation or seizure by the all-powerful agents of the dry secret "Tcheka." Organized gangdom, financed by bootleg prosperity sways and intimidates the enforcement agencies of the Government, clogging up the courts and breaking down the machinery of justice. Such a reign of terror has never been sanctioned by a modern government, except under Bolshevism, and never has popular contempt for law and constituted authority been so widespread and universal in organized society.

That prohibition is un-American has been fully established by the expert testimony before your committee of Messrs. Johnson, Coudert, and other constitutional authorities who have demonstrated beyond a doubt that the eighteenth amendment is a sumptuary law contrary to the spirit and original intent of the Constitution; that it is alien to the American ideals of liberty, equality, and justice; and that it is incompatible with the American form of Government. No one has publicly refuted, or attempted to refute, the opinion of these eminent jurists and constitutional experts. On the other hand, they

have been sustained by the National Republican Club and Union League Club, representing the most enlightened citizenry of America, who have voted overwhelmingly for the repeal of the eighteenth amendment.

We respectfully invite your attention to the Nation-wide prohibition poll conducted by the Literary Digest, the uncompleted returns of which indicate a decisive trend of public opinion throughout the Nation against prohibition, and in favor of its modification or repeal. It is no longer a question as to whether the people want the continuance of prohibition or the return of the saloon—they want neither. We believe the majority of the American people are anxious to find an honorable way out of the prohibition experiment, and to substitute in its place a better method that will secure temperance without destroying liberty, law, and order.

As young Americans, who have had no hand in inaugurating this ill-conceived experiment but who must suffer most from its baneful results, and in the belief that we are thereby voicing the sentiment of youth everywhere, we most earnestly petition Congress, through your committee, to heed the voice of the American people and initiate proper legislative reforms that will rid the country of the intolerable evils of bootlegging, bribery, and bigotry caused by national prohibition. We respectfully urge the adoption of the Buck temperance plan contained in House Joint Resolution No. 99, or as an alternative the Mason temperance plan submitted herewith, both offering simple amendments to the eighteenth amendment and practical systems of liquor control by the Government, instead of the commercialized liquor traffic by private distillers or bootleggers. We believe these to be the most adequate and the only possible substitutes for prohibition in America.

Respectfully submitted.

LEONARD MASON,
1660 Dahill Road,
LEIF JOHNSON,
736 Fifty-first Street,
DONALD C. BATSON,
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15½ East Thirty-ninth Street,
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161 Clarkson Avenue,
NATHAN R. GOLDMAN,
26 Court Street,
National Organization Committee.

THE MASON TEMPERANCE PLAN

The eighteenth amendment is a sumptuary law conceived by clergymen and professional reformers to regulate the moral conduct and personal habits of the American people. Its primary intent is to vest the Federal Government with police powers to enforce total abstinence in every State of the Union, regardless of the sovereign rights or wishes of the individual States. It was proposed as a war measure by Congress and ratified by the several State legislatures during the hysteria of the World War. National prohibition inevitably abridges personal liberty and States' rights heretofore guaranteed by the Constitution and Bill of Rights, and is, therefore, incompatible with the American form of government.

But the inherent defects of the eighteenth amendment can not be removed from the Constitution by the modification or repeal of the Volstead and Jones enforcement acts. Even if this could be accomplished, it would only tend to nullify the Constitution without effecting any lasting reform. Any adequate remedy must be constitutional in method and permanent in policy, and express the sovereign will of the American people.

The best remedy, under normal conditions, would be to repeal the eighteenth amendment. But such a course may not be wise or feasible at the present time, in that it might precipitate an extreme chaotic reaction that will bring back the saloon with all its attendant evils. An immediate reform, that will promote temperance and pave the way for an early repeal of the eighteenth

amendment, can be properly effected by a simple amendment to the eighteenth amendment, to make it read as follows:

"The manufacture, sale, and transportation of bootleg intoxicating liquors within, the importation thereof into, or exportation thereof from the United States and all territory subject to the jurisdiction thereof is hereby prohibited.

"The term 'bootleg' herein means any alcoholic products not manufactured, sold, or transported under Government control as provided by law.

"The Congress and the several States shall have the power to enforce this article by appropriate legislation: *Provided*, That each State shall have local jurisdiction over the intrastate sale and distribution of alcoholic beverages."

The repeal of the eighteenth amendment, or the adoption of the proposed amendment thereto, would automatically repeal the Volstead and Jones enforcement acts and enable Congress and the States to enact, in lieu thereof, National and State temperance laws creating a system of Government monopoly over the liquor industry in the United States. The system proposed herein combines the best features of the Bratt plan in Sweden, the Quebec system of liquor control in Canada, and the Buck temperance plan contained in House Joint Resolution No. 99. It embodies, in addition, the American principles of personal liberty and States' rights to make it compatible with the American form of government.

Under this plan, the administration of the national temperance law shall be vested in a national department of public welfare, created for that purpose and consisting of:

1. National board of temperance to control the manufacture, transportation, import and export of alcoholic products in the United States, and the interstate distribution thereof.

2. National board of health to prescribe scientific standards of quality of alcoholic and medicinal products, and other pertinent matters.

The individual States shall, however, be empowered to create State boards of temperance, for each State, and local boards of temperance, for each county, to exercise local option in regulating the sale, distribution, and alcoholic content of beverages within their local jurisdiction, subject to the State and Federal temperance laws.

The sale of alcoholic beverages shall be conducted by the State and local boards of temperance, from Government warehouses, under a temperance mail order, permit, and license system. Each sale shall be made by mail order only, and shipped by parcel post in sealed containers of definite unit quantity. Each container shall bear the official stamp of identification, showing the name of consignee, permit and license number, and the place of destination and use. The Post Office Department, or its authorized agents, shall be the only legal carriers of alcoholic beverages. Retail dispensation by Government stores, for home consumption, may be substituted for the mail-order method wherever practicable.

Temperance permits shall be issued, upon application, to individuals annually, for a prescribed fee, by the State boards of temperance. Temperance licenses to authorize dispensing agencies shall be issued in like manner, but upon application approved by the local police and health authorities. The temperance permits and licenses shall specify the annual and monthly quantities and kind of alcoholic beverages permitted in each case, with detachable slips to account for every purchase. These permits and licenses shall not be subject to transfer, and shall be suspended or revoked in case of abuse.

Public licensed agencies, such as restaurants, clubs, steamships, and hospitals, may dispense light wines and beer by sealed unit containers of prescribed alcoholic content and quantity limits, with means only and in proportion thereto. To dispense any other alcoholic drinks, the licensee must have a special permit for each occasion from the local board of temperance, upon special recommendation by the local police and health authorities. Any alcoholic beverages dispensed otherwise shall be considered bootleg subject to confiscation and the bootlegger subject to punishment as prescribed by law.

The enforcement of local temperance laws shall devolve upon the individual States, in accordance with the basic American principle of State rights. In the absence of State temperance laws, jurisdiction therein shall revert to the Federal Government until such time as the State shall enact its own temperance laws, the primary purpose being that there shall be no concurrent State and Federal jurisdiction in the enforcement of temperance laws. This will tend to safeguard the inherent personal and State rights guaranteed by the Constitution and Bill of Rights.

A Federal excise tax shall be created and levied on all alcoholic beverages, equivalent to the sales price thereof. The revenue derived from this tax, as well as the increased postal revenues accruing from the proposed temperance mail-order system, will help to reduce substantially the Federal income tax. The State temperance permit and license systems will, likewise, furnish additional revenues to the States, thereby supplying ample funds for law enforcement, public improvements, and temperance education.

The Federal monopoly over the liquor industry will enable the Government to enforce the use of American products and labor in the manufacture of all alcoholic products consumed in, or exported from the United States. This will restore additional opportunities for American industry, will help to alleviate unemployment conditions, and insure a steady increase in the demand for domestic farm products—a permanent economic contribution toward the solution of the problems of labor unemployment and farm relief.

The intent of this plan is to prevent the return of the saloon, to eliminate the speakeasy, and to put an end to the bootleg-liquor traffic. The success of this plan is predicated upon the belief that just and equitable temperance laws, compatible with American personal liberty, will command the respect and support of the American people who will eagerly cooperate in their enforcement. True temperance can thus be achieved, and the Constitution of the United States restored to its original status as an instrument of human liberty.

[One of the 23,230 plans submitted in the Durant \$25,000 prize contest]

HOW TO MAKE THE EIGHTEENTH AMENDMENT EFFECTIVE

(By Adolph Timm, of Philadelphia, Pa., founder and conductor of the American Institute for the Care and Education of Immigrants; supervisor of the schools of the Austro-American Society of Philadelphia; instructor in the school of citizenship)

To make the eighteenth amendment effective it is necessary to divorce prohibition, police power, police officials, and police courts from politics and make prohibition what it is, a social, moral, and educational issue. The moderate wets and dries must get together and help to solve the problem. The extremists of both sides will never solve it.

The eighteenth amendment is an edict which puts the American people on a strict drinking diet. The Volstead law is the recipe how the diet is to be carried out. Diet is wholesome for the human body and should be exercised just as well in eating, smoking, thinking, and in the mode of living. Education and common sense should teach people to apply diet voluntarily.

It is the solemn duty of the people to obey the eighteenth amendment and the Volstead Act. The individual must use will power, self-control, discard habitual desires at home, at the club, and at social functions. But it is also the duty of Congress to make the Volstead Act human, sane, and practical so as to make the eighteenth amendment effective. The act permits the use and sale of liquor and wine for medical and sacramental purposes under certain provisions. A person in need of a tonic can purchase one pint of liquor every 10 days at the drug store on a prescription from a physician. The liquor costs \$3.50, the prescription \$1. At this rate a quart would cost \$9, against \$1.50 in preprohibition times. The druggist pays a license fee of \$25 per year to the Federal Government.

This price of liquor may do for rich people. It imposes a hardship upon people living in moderate circumstances and makes it absolutely impossible for the poor man to prolong his life when he reaches its last stage. These are actual conditions which Congress should consider and which the opponents of the modification of the Volstead Act have to face.

The whole structure of the Volstead Act needs reconstruction. The scope of the law is too narrow. The use and sale of liquor and wine for cooking and baking purposes should be legalized. There is not one word in the eighteenth amendment which could be interpreted as an infringement in culinary art. What is snapper soup without a dash of sherry? What is a mince pie, a fruit cake, and the various kinds of pudding without a dash of liquor? Why

should it not be permitted to make these good things tasty and digestive without obtaining a prescription from a physician?

Liquor and wine are used in a number of tonics, harmless and nonintoxicating. Here the hardship comes in again with poor people. Even if they are willing to comply with the provisions of the Volstead Act they can not afford to pay the price. One can not help to ask: Where does the enormous profit on \$9 per quart liquor go? One can not help come to the conclusion that the sale and control system of the Volstead Act is wrong and defective. The producer is the right party to sell his product, assume the responsibility, establish appropriate sale places, and make the price reasonable. Our public utilities have reached a high standard of efficiency and good service. Why should the distillers and the wine producers not be able to do the same? The middleman should be eliminated. Only producers should be able to obtain a license, for which they would have to pay to the Federal Government and to the State. The Federal Government can not go into the liquor business, neither the States. The revenue derived from license fees should be used for the enforcement of the Federal law.

For this new sale and control system the following suggestions are made: Purchases of liquor and wine for medical, sacramental, cooking, and baking purposes can be made only by holders of a permit issued yearly by the State to persons of good, moral character who have attained the age of 21 years. The yearly fee for the permit to be \$1. The permit to contain the photograph of the holder. Forms of application for the permit to be furnished by the State to every notary public. Applications must be sworn to and witnessed by two citizens who know the applicant to have a good reputation for sobriety. Upon proof of a violation of the law the permit is to be revoked. Purchases of liquor and wine can only be made by holders of permits in person. In cases of sickness and disability authorized persons attested to by a physician, can make the purchase upon presentation of the permit. The attestation of the physician to be valid during the current year. The quantity of liquor purchased to be limited to 1 pint every 10 days, and 1 quart of wine every 10 days. Sale places to keep a record of each sale, open for inspection by the Federal and State authorities.

And now to that popular malt beverage called beer. Congress committed a serious mistake by prohibiting any beverage containing more than one-half of 1 per cent alcohol in the Volstead Act. This mistake made miniature breweries out of hundreds of thousands of American homes. Had Congress heeded the war-time statement of President-elect Herbert Hoover, made when he was food administrator, that people could not get intoxicated on beer containing and alcoholic content of 2.75 per cent, conditions would be different to-day. So far the percentage of alcohol actually intoxicating has not been fixed either by science or the courts. A scientific definition as to what is intoxicating may bring the percentage even higher than 2.75. Common sense, however, teaches not to go too close to the danger point.

Beer is the drink of the workingman. Beer and porter are nourishing for nursing mothers and a tonic for the aged. Good beer brewed under the pure food law would be liquid food. To deprive the people of a popular drink is a serious undertaking and not a move to further true temperance. It is sincerely hoped that Congress will give these conditions due consideration and raise the permissible percentage of alcohol in beverages.

Dry leaders should not deceive themselves and try to deceive others to look upon the result of the presidential election as a prohibition referendum. The prohibition problem needs practical attention, not theoretical. President-elect Herbert Hoover termed it splendidly when he, in his speech accepting the nomination, said that this great social and economic experiment, noble in motive and far reaching in purpose, must be worked out constructively.

Bootlegging, graft, and disrespect for the law will stop as soon as the law regulating the use and sale of liquor and wine is made more adaptable to human nature and common sense, and home-brewing will stop as soon as 2.75 per cent beer is put on the market. This together with a strict enforcement of the law and a constructive educational campaign conducted by moderate wets and dries is the only way to make the eighteenth amendment effective.

NEW HAVEN, CONN., February 27, 1930.

CHAIRMAN HOUSE JUDICIARY COMMITTEE,
Washington, D. C.

DEAR SIR: I have followed daily the hearings before your committee for and against prohibition and my attention this morning was drawn to Mr. Wadsworth's statements and as the proprietor of the above hotel I happen to know that what he stated to your honorable committee is a fact in every instance, and if I felt that you could spare the time, I could give you information substantiating every word of Mr. Wadsworth's statements.

Seventeen years in this college town, before and after prohibition, has shown me that it is an absolute failure and if you could know what goes on during the football season and other college activities, you would be able to determine immediately the facts as to the failure of prohibition. I have no hesitancy in saying that if the present situation continues for any length of time under the existing condition that it will absolutely mean the ruination of our generations to come, and in my humble way after making a very complete study of this situation, I am offering to your committee an idea of how this situation may be benefited:

1. Repeal the Volstead Act and have each State set the alcoholic contents of light wines and beers; the alcoholic contents to be of such volume as to make the beverages palatable and to preserve them.

2. Each State is to elect a commission to pass on issuing of licenses to reputable eating and amusement places. The commission is to have the right to designate any licensed establishment to sell wines and beers, to be consumed on the premises or for home consumption.

3. Change the name of the prohibition department to the temperance department.

4. The granting of a license automatically makes a dispenser of alcoholic beverages an officer of the temperance department with full power to act in regards to temperance being adhered to on his premises, and for which conditions he will be held responsible for to the licensing commissioner.

5. Breweries are to be allowed to dispose of their products through the hotels, restaurants, and amusement places, and will be not be allowed either directly or indirectly, to dispose of their products to any hotel, restaurant or amusement places in which they are interested financially or otherwise.

6. No licensed hotel, restaurant, or amusement place will be permitted to dispense beverages from a so-called bar, and beverages will be sold only in wrapped packages for home consumption or at tables with food.

7. Every village, town, and city will have the privilege at its general election to vote whether or not the majority of the community desire licensed dispensing of light wines and beers, and the State commission is to abide by the decision of the election in issuing licenses.

8. A violation of the above rules as laid down in this plan would mean the revoking of the license by the State commission of such hotel, restaurant, amusement place, or brewery to further deal in light wines and beers for all times, and the transfer or sale of property so losing its license would not have any standing in regards to future license, nor would the commission have the power to grant same.

9. Alcoholic stimulants, whose percentage of alcohol is higher than that specified in paragraph one and allowed by the State, and which is to be used for medicinal purposes only, are to be dispensed through drug stores acting as agents of the United States Government under its present rules and regulations with the exception that the drug store would come under the same rules and regulations governing the hotels, restaurants, amusement places, and breweries in regards to the violation as specified in paragraph 8.

Respectfully submitted.

J. C. LAVIN.

PLAN TO ACHIEVE TEMPERANCE

(Submitted by William Meyerhoff, Washington, D. C.)

1. Retain the eighteenth amendment.

2. The Federal Government shall be the exclusive manufacturer and dispenser of all spirituous liquors and of all vinous and malt beverages, containing more than one-half of 1 per cent of alcohol by volume.

3. It shall be the exclusive dispenser of spirituous liquors, containing at least 50 per cent of alcohol by volume, to be dispensed by it only through Government doctors, at cost price, and by them directly administered to bona fide patients certified by reputable nongovernment practicing physicians and surgeons, subject to their approval, except in cases of epidemics, disasters, or accidents, in which cases they may administer such spirituous liquors without such a certificate.

4. Congress shall provide that any malt or vinuous beverage that the Federal Government manufacturers and dispensers under this plan shall, as a matter of law and as a fact, be deemed nonintoxicating beverages, unless such beverages are used by the permittees and others in violation of this plan or any Federal law, when such beverages shall be construed and held, as a matter of law and as a fact, to be intoxicating and unlawful.

5. The Federal Government shall manufacture and dispense these liquors and beverages only in that State or those States whose legislatures shall have first enacted laws permitting or consenting to such manufacture or dispensation.

6. The Federal Government may manufacture such beverages in the District of Columbia, and it may be dispensed by it to the citizens of the United States residing in said District, including officials, officers, and employees of the Federal Government.

7. The Federal Government shall pay the regular manufacturer's tax or license to each State in which it is permitted to manufacture and does in fact manufacture liquors or beverages.

8. The Federal Government shall be prohibited from charging or collecting more than a net profit of 10 per cent on all sales made to permittees.

9. The Federal Government shall pay to each and every State permitting it to dispense and sell within its borders the beverages provided for by this plan 50 per cent of any net profit realized by it from sales made during any current year.

10. Every State, through its own laws, shall have the right to withdraw from this plan at any time.

11. The Federal Government shall make sales only to bona fide permittees in person, who are citizens, over 21 years of age, of the State in which sales are made, except as otherwise provided in section 6.

12. All persons engaged in carrying out this plan shall be Federal employees, with a civil service status, and no outside spies, snoopers, pikers, or informers shall be employed.

13. Before a citizen shall be entitled to become a purchaser at a dispensary, he or she shall first secure a Government permit, at a cost of not less than \$5, good for one year, unless sooner revoked for cause.

14. No permittee of vinous or malt beverages shall violate the terms or conditions of his or her photographic permit, nor keep, barter, or sell, any of his or her beverages, nor give away or drink any of his or her beverages outside of his or her bona fide home, where they may be drunk only by the permittees and members of their immediate family.

15. No drinks shall be sold, served, or drunk on the premises of any dispensary by any permittee or any other person.

16. All sales to permittees shall be made in original sealed packages, stamped and numbered, bearing the permittee's number. Not more than a pint of vinous beverage by volume and not more than 4 quarts of malt beverages by volume may be sold to any permittee during a period of 24 hours.

17. It shall be unlawful for any such permittee to have on hand at any one time more than 2 pints of vinous beverages or 8 quarts of malt beverages.

18. Under this plan all Federal prohibition officers and agents and all other Federal officers and agents charged with the enforcement of this plan and any other prohibition and temperance law and the criminal laws of the United States, shall be required by Congress to give an official bond, in a substantial amount, for the lawful discharge of their duties toward the general public. In order to prevent the unlawful invasion of the sanctity of American homes, unlawful searches and seizures of property, unlawful arrests, unlawful incarcerations, and other illegal acts. In the event of a breach of said bond, resulting in damage, injury, or death to any person, or damage to, confiscation of, or destruction of his property, such person, his heirs or representatives shall have a cause of action to sue such officer and his surety up to the amount named in such bond.

19. Any permittee convicted of public drunkenness, a felony, a violation of the national prohibition statutes, or any provision or section of this plan, shall forever forfeit his right to a permit.

20. The illegal possession, control, or use of any Government stamped receptacle, package, or bottle containing a Government beverage by any person, firm, corporation, speak-easy, club, or by whatever name they may be known or called, shall be a crime, subjecting all offenders, including all officers and agents, to one year's imprisonment for the first offense and five years imprisonment for any subsequent offense.

21. This plan, when enacted into law, shall take effect one year from the date of the passage of such law.

22. All laws or parts of laws in conflict with this plan are expressly repealed upon the taking effect of this plan.

23. A violation of any provision or section of this plan for which a punishment has not been specifically provided therein or has not been provided for by any other Federal law, shall be a crime and all offenders subject to punishment by imprisonment for not less than six months for the first offense, one year for the second offense, and five years for any subsequent offense.

WILLIAM MEYERHOFF.

SAN FRANCISCO, CALIF., April 11, 1939.

HON. GEORGE S. GRAHAM, M. C.,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: I inclose herewith for submission to your committee a copy of a plan as a substitute for prohibition which was submitted by me in the Hearst prize contest of a year ago.

The part of this plan to which I ask your special attention is that proposing a constitutional amendment, together with the outline of an act in substitution for the Volstead law. I am prompted to do this because I have seen it stated that, while much talk has been heard by your committee on the prohibition question, no constructive suggestions have been made. While my plan may not be complete or fully satisfactory, I believe the character of change which it contemplates is what the sentiment of the country favors. A copy of the letter submitted to the Hearst prize contest with the plan is also inclosed.

Trusting your committee may devise some plan to do away with the present intolerable situation, I am,

Yours very truly,

ARTHUR C. CAMPBELL,
By BERNICE SCHRAM.

SAN FRANCISCO, CALIF., April 26, 1929.

TEMPERANCE CONTEST COMMITTEE,
Care of editor of the San Francisco Examiner.

DEAR SIRS AND MADAM: As a substitute for total prohibition, which for the past 10 years we have had in law, but we have not had and can never have in fact, I offer a plan of partial prohibition, herewith inclosed, which I believe, if adopted, would be immediately approved, accepted, and obeyed willingly by practically all our people. I feel my proposal should appeal to all—wet and dry alike—and, to quote from the Call for the Hearst prize contest, prove to be "a practicable plan, as a substitute for prohibition which will secure better actual temperance conditions, which will be more easily possible of enforcement by State and Federal authorities, which will offer less encouragement to crime and tend less to debauch the public service, and which will not so outrage and violate the fundamental rights and personal liberties of American citizens." I have long been of the opinion that there is no plan of solution that does not include an amendment to the Constitution, that no modification of the Volstead law to make possible the manufacture and sale of light wine and beer of a satisfactory alcoholic strength could stand a test before the Supreme Court. Nor do I believe that if it were possible to make this modification, that it would be a complete solution of the problem, for it would still leave an unsatisfied demand for spirit and fortified wine.

There are hundreds of thousands of people, mainly past middle age, who have always partaken of spirit as a stimulant in extreme moderation, and there are hundreds of thousands of women, who, from time immemorial, have used gin during intervals of their lives to relieve suffering and pain. There are hundreds of thousands of families who want both spirit and fortified wine for culinary purposes, and I feel that in any scheme for solution of the liquor problem these people should be considered. The prescription plan with its accompanying outrageous prices is not the solution, and if the desires of this large number of people are not met by proper provision of law, the bootlegger will continue to thrive. In the working out of the liquor act of the Province of Quebec, which permits sale of both wine and spirit, that the increased consumption, within a given time, is 100 per cent of wine as compared to 25 per cent of spirit. That the Canadian liquor laws are proving their worth as producers of a state of true temperance may be gleaned from the following statement taken from the first report of the liquor control board of the Province of Ontario—the last of the Provinces to adopt a liquor control law. The Board's statement reads:

"The board wishes to express its deep appreciation to the people at large of the Province of Ontario for their general and generous cooperation in the endeavor to put into force a sane and safe government liquor control system. It is not by any means claimed that perfection has been attained, but the board does believe that many good results have been achieved, notably, a marked cutting down of the bootlegging evil; a lessening of youthful temptations to break prohibitory laws; the bringing about of greater respect for all laws; a decrease, if not an elimination of the making of home brew with its dangerous poison tendencies; and, it is hoped, a real stimulation to temperance in all things by education and home training, rather than by prohibiting which does not prohibit."

I can not agree with the opinion of some persons that any plan which includes an amendment to the Constitution is impossible of attainment. I think it is proven by the experience of Ontario that a people are willing to change any law which has proven a failure, no matter how firmly convinced they were originally of the value of that law. If my recollection is correct, this Province adopted prohibition by a majority of 400,000 votes. This was reversed at a second election to 200,000, and again this majority was cut in half and prohibition was overturned at the last election by a majority of 40,000. This amazing revulsion of sentiment took place, I think, within eight years; to say that our people can not do likewise under similar circumstances is to impeach their intelligence.

Let us all hope and pray that as a result of this contest some plan will be evolved which will settle once and for all this important question, the most serious that has arisen in our country since slavery, but let us also remember the words of the distinguished British clergymen who said, "I would rather have England free than England sober."

Yours very truly,

ARTHUR C. CAMPBELL.

PLAN PROPOSED AS A SUBSTITUTE FOR PROHIBITION AND SUGGESTION OF METHOD
TO BRING ABOUT ITS ADOPTION

(Submitted by Arthur C. Campbell, San Francisco, Calif.)

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

ARTICLE I

SECTION 1. After 180 days from the ratification of this article the amendment to the Constitution No. 18 is hereby repealed.

SEC. 2. After 180 days from the ratification of this article the manufacture, except for sale to the Government, and/or for exportation, the sale or transportation of intoxicating liquors within, the importation thereof into, except for sale to the Government, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited, except under conditions and regulations authorized by Congress, provided Congress shall not authorize the sale of intoxicating liquors

containing alcohol in excess of 10 per cent by volume except by and through a Federal Government agency.

If Congress desires to have the acceptance of any system which it may create and authorize for the sale of intoxicating beverages optional with the several States, there should be added to the above amendment the following: "Provided, That any system for the sale of intoxicating beverages which Congress may devise and authorize pursuant to the above section shall not be established except in those States which through their legislatures petition therefor."

While I have incorporated in the above amendment section 1, providing for the repeal of the eighteenth amendment, I believe this unnecessary as the adoption of section 2 would in effect repeal the eighteenth amendment, just as the adoption of amendment 12 superseded a paragraph of article 2 of the Constitution.

The effective date named, 180 days, is only tentative, and of course would be changed to suit circumstances, but appears to us to be sufficient time to enable Congress to pass enforcement legislation.

The alcoholic content—10 per cent—is also tentative, as whether wine with no higher per cent is potable is a question for experts to decide. My idea is to make it possible to distribute light wine and beer with somewhat less restriction than would apply to spirits and fortified wines. Amend national prohibition act (Volstead law) by striking out all parts thereof which do not conform to and are inconsistent with provisions of proposed amendment, and by making additions to said act to provide for the creation of a liquor-control board to be appointed by the President and to function independently or under the Post Office Department, or the Department of Commerce, and to authorize the board to issue permits for the manufacture, for sale to the Government and for exportation, under license and bond, and with supervision, regulation, and control by the board; make purchases from manufacturers and importers and to import direct; fix per cent of alcoholic content of all liquors, wines, and beers; establish stores for the sale of alcoholic beverages, in containers only, bearing Government seal and label, in connection with post offices or separate therefrom; fix hours for sale; issue annual permits to purchase alcoholic beverages, for consumption in their places of residence only, upon their written and signed application therefor to all consumers who are over 21 years of age who are permanent residents; issue permits in same manner to temporary sojourners for a period not to exceed one month; issue permits in same manner for single purchase to those not possessing other classes of permits; issue permits in their discretion to regularly established legitimate hotels and restaurants, dining cars, dining clubs, and passenger steamships to sell light wines and beers, under license and bond, with supervision, regulation, and control by the board; keep a record for statistical and other purposes of all individual permittees, showing name, residence, age, occupation, nationality, nativity, and quantity of liquor, and date of purchase; cancel or suspend permits for violation of terms thereof or other violations of the liquor laws, and in addition to above all provisions contained in the liquor control acts of the Canadian Provinces which may be deemed essential to insure the making of a law to effectually limit and control the use of intoxicating liquors.

If the Post Office Department were used as the selling medium, the large annual profits which would accrue would not only be sufficient to wipe out the yearly deficit of that department, which has averaged \$50,000,000 per year during the past 10 years, but leave an additional sum of many millions more which might be allocated to the several States to be used for temperance education, construction of highways, etc. To facilitate and expedite the preparation of sales depots and for economy and efficiency of operation of same, I favor using the Post Office Department as the selling agency. It is a department having the high regard and confidence of the entire country. It is highly and efficiently organized. Its employees are men and women intelligent, efficient, and experienced and trustworthy, and are all under civil service. Its post-office stations are conveniently located to accommodate the public. Its success in handling the parcel-post and money-order system is an evidence of its ability to function efficiently in lines other than merely the collection and transmission of mail.

Method to bring about adoption of plan: Association Against Prohibition to take initiative by indorsing plan, and then do the following: Have introduced in Congress resolution proposing amendment. Organize on national party lines, but nonpartisan, branches in every State. Call national convention to adopt platform indorsing plan, a pledge to support same to be required

of every legislative candidate, State and National, to provide for an intensive campaign of education to be broadcast by press and radio to prove that prohibition has not prohibited, that predictions of its proponents are unrealized, but on the contrary, that evils never before existing are now rampant throughout the land. Stress the great success of the liquor-control system of the Canadian provinces. Appoint a national committee of high-minded, patriotic men and women whose devotion to the cause of temperance is unquestioned. Adopt a slogan to read:

"Government sale and control with personal liberty and temperance versus bootlegger sale and control with intolerance and intemperance."

PROHIBITION VERSUS CONTROL; A SIMPLE PLAN FOR RESTORING TEMPERANCE CONDITIONS

Out of a chaotic mass of discussion, reports, and proposed legislation which the tenth anniversary of prohibition has produced, there stands forth one commanding question. Whither are we drifting?

The good sense of the American people will no doubt solve the question, sometime, somehow. But each new move on the prohibition chessboard only adds to the confusion and popular opposition, creating more chaos, more lawlessness, more hypocrisy, more corruption, more liquor consumption, more evidences of nullification. Will the solution, when it comes, revive the old saloon; will it bring more speakeasies and bootleggers and hijackers; or will it restore temperance, reestablish personal liberties guaranteed by the Constitution, and insure respectable conditions in the future?

A change is inevitable. Already indications of a radical flop or nullification are rising above the horizon. The Democratic Party is wet with a constructive national program; the Republican Party, encumbered with vociferous dry parasites, is swiftly sliding into the narrow confines of the old Prohibition Party under prohibition as its only issue. Shrewd observers see the handwriting.

In all this confusion no clear, definite plan to preserve what has been gained and avoid breakers ahead has crystallized or even sprouted. The crux of the whole situation appears to be an overwhelming fear or thoughtless disregard of reviving the old saloon. This fear dominates voters everywhere outside of a few metropolitan centers, resulting in repeated reelections of politically "dry" legislators. Yet the voters would no doubt support any practical plan that offers relief without retrogression.

Such a plan must take into account the return of the saloon as well as the destruction of the prohibition speakasy. Upon these two dominating adjuncts of the liquor traffic hangs the solution of the whole problem of liquor control, for liquor can be controlled but never prohibited. Nature makes it, and what nature makes man will consume.

The old liquor traffic was handled by the States under 48 varieties of liquor laws, each influenced by local politics, local taxation, and local and interstate competition. Is there anything in such a system to construct satisfying conditions? Imagine the States attempting to control, tax, and administer 48 different laws regulating the manufacture and sale of tobacco, cigars, drugs, narcotics, or anything else that is logically subject to national license and tax!

The eighteenth amendment divorced the liquor traffic from the States and lodged it with the Federal Government, where it belongs and should remain, for it is a national problem. Thus the Federal Government is now engaged in the liquor business, and it is squarely up to Congress to manage it, not with "concurrent jurisdiction," which politely means "passing the buck," but in a manner that will command confidence, respect, and cooperation. Here, I believe, is a concrete, feasible plan:

Amend the eighteenth amendment by adding the words "except by authority of the United States Government," and repeal the second (concurrent jurisdiction) section.

Then repeal the Volstead Act and substitute a national liquor law giving the States and their subdivisions local option, and also provide for payment or return to the States of a liberal percentage of the liquor taxes collected within their borders, similar to the method practiced by the States in returning to their counties certain school, highway, gasoline, and other tax moneys. Such a law should embody the following features:

1. Manufacture, importation, sale, and transportation of all alcoholic beverages and hard liquors to be exclusively under the direction or license of the United States Government, and permitted only in such States and subdivisions thereof which grant permission through local option action, each State granting permission to receive from the Federal Treasury its prorata share of liquor tax money levied upon sales within its boundaries.

2. All beverages and liquors to be handled from plant to consumer only in original sealed containers, under stamp and seal of the United States Government.

3. Station a Government inspector in each plant of manufacture to stamp each container with name and date, affix tax stamps, and guarantee purity and quality of contents. License and bond only plants of specified capacity and equipment, and limit the number.

4. In States and subdivisions thereof, which grant permission, establish stores upon recommendation of local governing boards as follows:

(a) Government stores conducted by Federal officials in the larger cities.

(b) Government licensed and bonded stores privately owned in smaller municipalities.

Both stores to handle beverages and liquors only in original sealed containers not to be opened on the premises.

5. License responsible persons over 21 years of age to purchase at minimum intervals at specified local stores, issuing coupon books for the purpose. Refuse licenses and revoke books on sustained complaints.

6. License bona fide hotels, cafes, and restaurants which serve regular meals to serve beverages only and in original containers at tables. No bar, barroom, or hard liquors permitted. Such licenses to be granted upon recommendation of local municipal governing boards.

7. Fix hours of service, establish and post retail prices to purchaser, refuse and revoke licenses upon sustained complaints, and regularly inspect all plants, stores, and licensed places.

8. Utilize the present Internal Revenue Department, districts, and personnel to operate the law.

The foregoing offers a skeleton plan which, properly framed into law, the Federal Government can administer as simply and easily as it now operates the tobacco, cigar, postal, or any other revenue-producing arm of the Nation. It would command confidence, respect, and cooperation. The guaranty of purity and quality combined with public posting of retail prices would drive every bootlegger out of business and simplify both distribution and control. Violations and corruption could be easily traced. There would be no incentive for the old saloon or the present prohibition speak-easy. Such a plan would preserve both State and local municipal privileges, attract without opposition State and local cooperation, enable the States and their subdivisions to share in liquor taxes, and remove innumerable opportunities for graft, crime, corruption, and excessive profits. State, municipal, and popular cooperation would be voluntary instead of compulsory. It would bring into the open, in public view, the irrepressible desire and habit of drinking, and thus rob it of the vices and destructive influences which dark, barricaded recesses invariably create. It is a well-established fact that vice succumbs to impotency and purification when brought into the light of publicity. Liquor drinking is no exception. The tighter the lid of prohibition is screwed down the higher the price of liquor rises, and the higher the price the greater is the opportunity for graft and profit, and profits invite risk, crime, and lawlessness. Eliminate opportunity for profit, and vice, graft, and corruption fade away.

In the light of history and experience the liquor problem can not be solved by the States without conflicting and demoralizing results. The return of the old saloon in some form would be inevitable. Local politics, foreign nationalities, competitive conditions, all would mitigate against uniform control and plunge the business into the same degradation that led to prohibition. Congress, if it will, can solve the question by taking hold of it in a practical, businesslike way and lift it to a basis of respectability under the plan outlined above.

W. STANLEY CHILD.

ONEIDA, N. Y., February 14, 1930.

A PRACTICABLE SUBSTITUTE FOR PROHIBITION

The eighteenth amendment to the Constitution forbids the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes in the United States and all territory subject to its jurisdiction.

Section 2 of the amendment provides that: "The Congress and the several States shall have power to enforce this article by appropriate legislation."

The fact that the amendment does not define what is intoxicating made it necessary for Congress to pass the Volstead Act, which permits one-half of 1 per cent as the legal amount of alcohol for beverages.

Now, if it is constitutional and within the power of Congress to regulate the amount of alcohol which beverages may contain, then it would seem that the logical and most practicable course to pursue, in order to bring about relief from the present deplorable situation, would be for the Congress to amend the Volstead law, or enact a new law permitting the manufacture and sale of beverages containing a larger percentage of alcohol.

The great majority of the people of this country, after 10 years' experience with absolute prohibition, are undoubtedly in favor of some change which will afford immediate relief from the present reign of crime, corruption, and lawlessness brought about by the present restrictions. But any plan proposed and adopted should be one which will promote true temperance and decency and serve as a protection against the return of the old-time saloon.

The opposition is so general, even amongst those who may be classed as wet, against any plan which would permit the unbridled and promiscuous manufacture and sale of intoxicants, that any attempt to repeal the eighteenth amendment would meet with disaster. The people regard the eighteenth amendment as a guarantee and protection against the return of the old-time saloon, and they would undoubtedly rally to its support if an attempt were made to repeal it.

The situation demands immediate relief, and this immediate relief can be had only through congressional action.

I would therefore propose that the Congress either amend the Volstead Act or enact a new law which will permit the manufacture and sale of beverages containing a larger percentage of alcohol than is permitted by the Volstead law.

The manufacture and sale of such beverages to be conducted only by persons or firms licensed by the Government and under strict Government supervision and regulation.

The number of such persons or firms to whom licenses may be granted to be based on the population.

Persons or firms to whom licenses are granted shall be obliged to furnish a bond sufficiently large to insure:

First. That the beverages so manufactured and sold will be pure and wholesome, and in accordance with a standard of purity to be designated by the Government.

Second. That said beverages will be made and sold legally.

The law shall provide for the forfeiture of the bond as well as the license for violation of these provisions, or any other conditions which Congress may choose to impose.

No retail sale of such beverages in public places shall be permitted. Beverages shall be sold direct from the place of manufacture to the consumer, and in limited quantities to be specified by the Government.

The Government shall provide and maintain inspectors at all places where such beverages are made and sold, whose duty it shall be to examine and test the quality and quantity of every ingredient used in the manufacture of the beverages, to insure their conformity to the standard of purity set by the Government.

The Government shall have the right to impose a tax upon all such beverages sufficient to cover the expense of supervising their manufacture and sale.

Each State shall have the right to impose a reasonable tax upon all such beverages made and sold within its borders.

As a means of protection to those who may obtain the right to engage in the manufacture and sale of such beverages, and for the purpose of discouraging bootlegging, the law should provide for a penalty of one year imprisonment in a Federal prison for the first violation of this law, and five years imprisonment for the second and subsequent violations.

Respectfully yours,

JOHN J. MARTIN.
Youngstown, Ohio.

THE REMEDY—WHAT CONGRESS CAN DO ABOUT PROHIBITION

"Let us raise a standard to which the wise and honest can repair."—GEORGE WASHINGTON.

Propaganda has been zealously circulated in this country that nothing can be done about prohibition without changing the eighteenth amendment to the Constitution.

This can not be stated as a fact until the Supreme Court so decides. No such decision has been rendered; until that tribunal hands down its opinion, one guess is as good as another.

As the facts stand to-day on this point, there is good reason to hold that Congress has now within its powers ample authority to relieve the country of the vicious condition due to prohibition without waiting for any change in the Constitution.

When this fact is generally understood, a seat in Congress may not be such a comfortable place for those misrepresentatives conspicuously prominent because of dripping luggage and dry voices from wet throats.

A preponderance of moral cowardice will never produce a leadership in Congress capable of giving us better liquor control laws than we now have. As long as we placidly submit to being fooled on this question, there will be plenty of politicians willing to go to Congress and do the fooling.

Congress can remedy the evils of prohibition by giving the States two alternative measures for control of intoxicating beverages by the Federal Government: One, absolute prohibition; the other, strict Government monopoly for dispensing liquor; by providing:

1. That the Volstead law shall be so amended as to apply only to States having State laws for its enforcement;

2. That Congress shall enact a Government monopoly law which shall apply to States having no laws for enforcement of the Volstead Act;

3. That Congress, from time to time, shall apply to Territories, districts, and subdivisions other than States, either of these laws it deems expedient.

After 10 years of prohibition, thinking men and women in this country have reached the point where they no longer need propaganda or argument to enable them to form a conclusion as to whether the "noble experiment" is a success or a failure.

On one point there is unanimity of opinion: That the prohibition law is not functioning satisfactorily. This is shown when dries demand more money, more men, and more vigor to enforce it, and when wets say it can't be enforced.

The vital question is: What is to be done about it? On this we are divided into two irreconcilable camps; in one those who favor the present prohibitory law, and in the other advocates of the legal use of intoxicating beverages. The fact that this wide difference separates these factions, with varying degrees of wetness and dryness in each accounts for the situation that no one form of liquor control has yet been suggested which comes anywhere near satisfying both, and it is very unlikely that such a substitute for prohibition can be devised by mortal man.

Honest differences of opinion based on the very laudable desire to promote national temperance should be respected. To call every person who does not observe the prohibitory law a menace to society, and every prohibitionist a fanatic, gets us nowhere, nor will it.

Agreement on one law being impossible, honest statesmanship and good citizenship suggest that Congress provide two; both laws to be enforced by the Federal Government—one we already have, the Volstead Act—but giving to each State the right to say to the Federal Government which law shall be enforced in that State.

The plan herelu suggested contemplates two classes of States so far as liquor control is concerned, and is based on the following propositions:

1. That the Federal Government now has supreme power over the control of intoxicating beverages.

2. That, despite such authority, no plan of control can succeed unless so devised as to win support and cooperation of the States with the Federal Government.

3. That coercion of even one State into accepting any plan must be impossible, either by the Federal Government or by any number of States, and each State must be fully protected against harassments of other States in whichever plan it adopts.

4. That the principle of Government monopoly is the most logical for legalizing the sale of intoxicating beverages.

5. That a Government monopoly law can be enacted by Congress without any change whatsoever in the Constitution.

The eighteenth amendment to the Constitution does not, either directly or by implication, prohibit the Government of the United States from exercising its sovereign right to manufacture, import, transport, or sell intoxicating liquors for beverage purposes. It reads:

"SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

Unquestionably the amendment is loosely drawn, but no one will contend but that it clearly purposes to prohibit individuals the rights to manufacture and to traffic in intoxicating beverages. However, that does not by any means imply that the sovereign Government is prohibited from doing so. Nor can it be maintained that these rights were never expressly given by the States to the national Government, because when the States ratified this amendment they surrendered all their authority over intoxicating liquors to the Federal Government. If these rights do not now rest with the Federal Government, where do they rest? If not in the Federal Government nor in the States, are they still reserved to the people despite the eighteenth amendment?

All facts bearing on this point in the history of prohibition since this amendment was adopted 10 years ago, confirm these rights in the hands of the Federal Government. All this time liquors have been imported and transported by permission of our Government given to representatives of foreign Governments in this country, and liquor is now being manufactured by the Federal Government for dispensing to the people upon prescription. It must be conceded, then, the Government has such rights. Nor is it good logic to question the Government's right in these matters at this late day, when for 10 years the Government—all this time in the hands of the friends of prohibition—has openly and undeniably acted upon the theory that it has these rights, and received them from the States by the adoption of the eighteenth amendment.

There may be a wide field for academic discussion as to whether the States could or did legally convey to the Federal Government any authority at all by the adoption of this amendment, and likewise a pleasant intellectual pastime debating whether the Government has authority to make and sell intoxicating beverages, but the fact remains that it is doing those very things, and has also laid down by acts of Congress, passed under color of authority conferred by this amendment, explicit regulations as to how and by whom these things could and should be done.

If the Government can manufacture liquor and say it can be sold to citizens on prescription, it can make it and say it shall be sold on personal permits through its own retail depots. In both cases the liquor is for beverage purposes. The fact that the Government is now doing these things, is the answer as to whether this proposed plan can be adopted by Congress without any change whatsoever in the Constitution.

In the words of that great exponent of State's rights, Grover Cleveland, it is a condition that confronts us, and not a theory.

Rightly or wrongly, the condition is that the Federal Government is now exercising this supreme authority, and in the opinion of many, it is extremely unlikely that it will ever return this authority to the States. Experience seems to indicate that it would be a step backward to do so, for the result would doubtless be a patchwork of 48 different kinds of liquor control, some possibly good, some poor, some downright pernicious, and all without revenue to or consideration of the Federal Government; nor would there be any cooperation among the several States.

With all due respect to the doctrine of State's rights, it is just as practical and as much in conformity with the spirit of the Constitution for the Federal Government to exercise authority over intoxicating beverages as to regulate matters of bankruptcy and naturalization.

It may be true, as the advocates of State's rights warn us, that the tendency to centralize power in the Federal Government and thereby weaken authority of the States, is dangerous to the right of the people to local self-government, but as to liquor control, the step has already been taken. The problem now is how to devise the most practical way under the circumstances of giving to the

States the largest degree of self-determination as to how this power shall be exercised by the Federal Government in each State.

Nor can it be contended that it would be unconstitutional for the States to elect which of two liquor control laws they wished to live under, for in section 2, the States are given concurrent power with Congress to enforce the amendment. If this is dual authority, it is not new to our form of Government, as every citizen lives under a dual authority composed of one State and the National Governments.

Government monopoly would insure uniformly pure and cheap liquors sold directly to rich and poor consumers alike, and a Government monopoly is the easiest of all laws to enforce. Nor could there be private profit; and there could be no vested interest engaged in the liquor business to become inimical to good government and good public morals.

Prohibition is doubtless responsible for many evils, but all will agree one good thing has resulted. It has extinguished all vested interest in liquor. The state is clean. There is now no capital investment in the liquor business in this country that we are bound to respect. No argument is being attempted here, nor is it necessary to consider the question as to the justice or injustice of how this result was obtained. That is not relevant. The important fact is the way is now clear for adoption of governmental monopoly without confiscation of private property and without disturbance to private business. No other country is in such a favorable position. Countries which have adopted any form of government monopoly only succeeded in getting what they have by making concessions to vested liquor interests. America is free to develop a really scientific plan of Government monopoly, and we should be satisfied with nothing less.

By Government monopoly for such States as wish to adopt it, and prohibition for such States as wish to retain it, there would be no violation of personal rights. Majority rule, the basic principle of democracy, would guarantee the same full measure of personal liberty on this question as in other matters controlled by the States, and Federal and State Governments could work in harmony with the expressed sentiment of the majority in each State.

One of the chief reasons why the prohibitory law is not enforceable is that so many States governments, reflecting the sentiment of at least an important number of its citizens, are unwilling to help Federal enforcement. Already several States have refused enforcement legislation for prohibition, and more threaten to join their ranks. Our position in this respect is evidently more serious than many people fully realize.

It has been advocated that States having no enforcement laws for the Volstead Act should be compelled by the Federal Government to help enforce the prohibition law in those States. Shall we continue inciting passive resistance until it increases and multiplies into active nullification by so many States that a clash of force results? Who can say with certainty how the Nation is divided numerically on this issue, and how distant or how close we are to the danger line of open insurrection? Some may ridicule such an idea. There were those who ridiculed the possibility of our Civil War. We must not ignore the explosiveness of human nature.

The present legal use of intoxicating beverages can be amplified and extended into a complete Government monopoly law by congressional enactment, providing:

1. That the United States Government shall make and provide direct to the consumers through its own system of distribution scientifically pure liquors for beverage purposes containing more than one-half of 1 per cent of alcohol by volume.

2. Beverages shall be dispensed only on personal permits, limited as to time and as to quantity obtainable, and liquor procurable only at Federal depots or stores, sufficient in number, capacity, and location to meet requirements of population, but no consumption of beverages shall be permitted on premises where dispensed, excepting as provided in paragraph 4.

3. Beverages dispensed only in original containers, sealed by Government stamp at place of manufacture or at port of importation, and restamped when sold to consumer, and have printed thereon the Government price to the consumer, and other data as to quality, quantity, alcoholic content, etc.

4. Hotels, restaurants, inns, taverns, and other places of public accommodation where meals are served, including public passenger-carrying lines, may have special permits under proper regulations, permitting resale of beverages in original packages to guests at such prices as the Government may fix for consumption with meals on the premises where sold.

5. No personal permits shall be granted to persons under 18 years of age, nor to persons under 21 years without special permission of parent or guardian, nor to excessive users to the detriment of themselves or families, or to the public good.

6. All liquors shall be furnished to the consumers at the lowest prices practical and uniform in price at all places where dispensed, and in no case higher than sufficient to cover all costs including administration and enforcement of this law, plus such amount of revenue as the Federal Government deems necessary.

7. Growers of fruits usable for beverages may be given permits under proper regulations for manufacturing liquors for family use upon premises of the grower, fixing annual quantities for each head of family and for each dependent, by payment of a per gallon tax.

8. Special permission for sacramental wines which will prevent such liquors from being used in any other way.

9. Commercial alcohol to be supplied by the Government direct to users at lowest possible prices for the arts, industries, and sciences, but exportation of alcohol in any form prohibited.

10. Administration of this law exclusively by one department of the Federal Government, which shall set aside annually out of income from this law, a sum of money for public education in States wherein this law is operative, to promote temperance as will best serve the public good, and inculcate individual sobriety.

11. This law to apply to all States which ratify it either by act of State legislature by majority vote of members thereof voting, or by majority vote of the State's electors, or by repeal of such State laws as conflict herewith.

12. Any State not ratifying this law as above provided and not having enacted enforcement legislation for the Volstead law at the time this law becomes operative, shall be deemed as having formally ratified this law.

13. The Federal Government shall extend the operation and benefits of this law to States entitled to it, and pay annually to such States a percentage of the revenue collected under this law in each State, which percentage shall be uniform in all States ratifying this law.

14. Any modification, extension, or additional penalties to this law by any State shall deprive such State of all rights and privileges under this law, until such disabilities are removed.

There are no radical or untried experiments in such a law. All of its provisions have been used or are now being used in one form or another in various countries; they are simply assembled and made adaptable to our conditions and needs.

The only valid objection drys have ever been able to offer to permitting both wet and dry States, is that dry States could not enforce dry laws because of the flow of unlawful liquor from wet States. This could not occur under this plan. By the system of individual permits, enough liquor could not be procured by bootleggers to make a profitable business of transporting and selling it in dry States. Since permits would have to be renewed frequently and could be canceled for cause, attempts at bootlegging could be detected easily and punished promptly. Along borders between wet and dry States the police authorities of both States, and also the Federal authorities, would have every incentive for acting in cooperation—a striking contrast to our present chaotic enforcement conditions—and all these officers would of necessity have to be bribed by the bootlegger, and that, too, in face of the fact that the possible amount of liquor he could get would be so limited his profits would preclude paying bribes of enticing amounts. In other words, truckloads and carloads and shiploads offer chances for big money, but not quart bottles and gallon jugs. Citizens of dry States could not cross the border and get liquor in wet States as any permit they could get would only be good at hotels, restaurants, etc., for consumption with meals.

This law would so effectually take the profit out of bootlegging that the illicit business could not survive. In States going wet under this law it would end overnight, for no one would buy the bootlegger's concoctions when pure Government liquors were obtainable at cheap prices. In dry States bootlegging would exist only in proportion to the number of people there who wished it to exist.

Permits could be so devised as to make them as impossible of being counterfeited and as valueless in possession of unauthorized persons as passports are now.

Beverages could be stamped where and when manufactured or imported, and if possessed by unauthorized persons, they would be prima facie evidence of illegal possession, since a permit holder could not have legal possession without a second, or sales stamp, affixed at time of purchase. Entries could be required for each purchase on the consumer's permit.

By sale of beverages in original packages only, the Government price could be printed thereon, and also at what price the Government permitted the sale of that package when sold in a hotel or other public place serving meals, as provided in paragraph 4 above.

By this law the same quality of pure liquors at the same price would be obtainable whether purchased by the workingman in his boarding house or the millionaire in his club.

The stamp issued to growers of wine grapes for making family wine, and the stamp for sacramental wines, could also be so safeguarded as to prevent such liquors going into unauthorized hands, but the incentive to use these liquors illegally would be practically eliminated by the supply of Government liquor available.

Under this law restraint could be put on those who use liquor to excess, or prompt punishment for those who abused the privileges of the law as is done now for misuse of the United States mail facilities. Now under so-called prohibition we continue to arrest and fine offenders, and the police records continue to show more and more arrests for intoxication.

The responsibility for administration of this law should rest exclusively in one department of the Government to prevent that great national indoor sport known among politicians as "passing the buck." Congress could regulate the amount of revenue necessary, a percentage of which would be returned to the States in which it was collected, and a portion of this net revenue spent in the States under this law to educate the public in the temperate use of intoxicating beverages. For ten years we have been taxing the people to get immense sums of money, and then spend it to try and make them obey a law which was supposed to make them temperate; certainly an extraordinary educational theory.

There would be no confusion in inaugurating this law. The States which have passed enforcement laws for the Volstead act, and do not repeal them by the time this law went into effect, would retain their present status as dry States, while in States which have no such enforcement laws for the prohibition act, the Federal Government would enforce the new law legalizing liquor. States could change from wet to dry or dry to wet by vote of the people or by legislature of each State, and the Federal Government would enforce in each State whichever law the States decided they wanted.

There is no necessity in this country for a caste which assumes responsibility of doing the people's thinking on this question. In Canada the people have shown themselves fully capable of discerning which is the better, prohibition or Government monopoly. Given the opportunity, experience will do the same for us. In the meantime coercion of any State or any number of States into being either wet or dry would be impossible under this law. Forty-seven States could be either one or the other and the remaining State would be perfectly safe in its right of self-determination on the liquor question, and free and unhampered to enforce its sovereign laws.

That principle is one of the foundation stones placed in the Constitution by the fathers. Let us adhere to it, and be fair about this question—the States fair to each other and to the Federal Government and the Federal Government fair to all the States.

If we solve this problem it must be done on that principle. If we can not solve it, other nations will be justified in doubting the success of our theory of self-government.

Two classes of undesirables, bootleggers and professional prohibition reformers, would speedily become extinct in States having this law. Their occupations would be gone; they would fade from the picture. The question of liquor control would cease to be a political question because it would have no interest as a theory of government, and revert to what it fundamentally is, a practical question of social and economic expediency. Social and humanitarian advocates of temperance could then be heard above the clamor of prohibitionists for more teeth in our laws, when what we need is more brains in them.

This law would put an end to millions of dollars of tax money being squandered annually in the failure to enforce prohibition, and instead furnish employment to labor and increase consumption of the products of our farms and factories.

It has been said the wise man changes his mind, the fool never. Of all the countries which have tried prohibition only the United States and Finland retain it. One prohibition's reply to this was, the United States should prove it can make a success of that which other countries made a failure. Such a statement is simply a confession that he is more interested in proving his pet theory right, than he is in the welfare of his country. The great men and the great achievements of America are not measured by such sentiments.

The recent declaration of a leader of this "noble experiment" that prohibition would be an admitted success in 140 years and we should try it that long anyway, means nothing excepting that he was trying to "get on the front page."

These are of the type which object to Government monopoly, because, they say, it would be a national disgrace for the Government to engage in selling liquor. They close their eyes to the fact that countries which have adopted governmental monopoly laws did so to escape the disgrace of the failure of prohibition, but we still accept them as worthy members of the society of civilized and cultured nations of the world.

Why not the legalized use of intoxicating beverages by Government monopoly? We have tried about everything else from no control at all to prohibition.

And now we are like Job of old, none in the wilderness and our last condition worse than our first.

CHALMERS S. BAIRD.

SAN FRANCISCO, *January, 1930.*

EDUCATIONAL FOUNDATIONS,
BROOKLYN, N. Y., *March 22, 1930.*

HOUSE JUDICIARY COMMITTEE.

The Capitol, Washington, D. C.

Re Eighteenth Amendment.

GENTLEMEN: I trust it will be possible to consider the attached views of a plain citizen.

Very truly yours,

HENRY S. CHAPIN.

MARCH 22, 1930.

I am against prohibition because:

1. It partly invalidates the Bill of Rights (Supreme Court opinion) and therefore must be changed.
2. It has created the bootlegger and his speakeasy, and financed the underworld.
3. All benefits claimed for prohibition are due solely to closing the saloons. This could be done better and cheaper by other methods.

ONE REMEDY

Add to the eighteenth amendment "except by Government," or an equivalent expression. Government then to:

1. Dispense liquor to those who do not abuse it, at low rates, small profits.
2. Put abusers in asylum until cured.
3. Spend most of the profits on public education and enlightenment.

This would keep the saloon closed, shut out the speakeasy, help all police work, promote temperance and progress, and certify the fundamental rights of American citizens.

HENRY S. CHAPIN.

UNISTA PLAN

(By John Parker, President The Unista, Philadelphia, Pa.)

1. We want a national corporation to be chartered by Congress with authority to manufacture, transport, and sell good beer, wines, and liquors, both for medicinal and healthing purposes. We believe that "healthing" is the better

word to convey the idea of health management, which is a natural right that properly belongs to every respectable citizen.

2. We want the States authorized to issue license cards, similar to automobile licenses, to citizens who want to buy openly for moderate use as stimulants and who will sign an agreement undertaking the responsibility for taking extreme care that the alcoholic liquors which they buy do not get into the hands of unlicensed citizens, and also that the licensee will not use or permit to be used in his home or elsewhere, intoxicating liquors for beverage purposes.

3. The test of such use will be intoxication, or the use of alcoholic liquors in such quantities as to interfere with their value as stimulants. This matter can be left to the discretion of the State courts, who are charged with the responsibility of upholding the local government required to prevent drunkenness, disorder, or crime, and particularly to guard against the operation of automobiles by anyone while under the influence of liquor.

I have operated automobiles for a quarter of a century without ever hurting anybody or even touching another car so as to make a dent in it. I am not a slow driver, but I think that 7 miles an hour is too fast, when it kills an old lady on Walnut Street, and that any speed is too great for passing around corners or points where one can not see clearly ahead, when such speed injures someone or does some damage.

I believe it possible for everyone, who is fit to run a car, to run it safely if he will assume complete responsibility for having control of a death-dealing machine and will run as slow as necessary, or stop altogether when there is any doubt about the safety of other people. I believe it possible to secure a large membership in an automobile association, who have as good a record as I have, and who will be willing to join me in an agreement to make no defense in case we should injure anyone and to never run another car after we have once proven ourselves unfit.

With this proposed association to establish a standard of conduct, I believe that any accident caused by a user of intoxicating liquors might be made prima facie evidence that he was under the influence of liquor when the accident occurred, unless he could prove by the testimonies of people of character and responsibility that he never indulged himself in the use of intoxicating liquors for beverage purposes in the slightest degree.

J. C. PARKER.

EAST LIBERTY, PA., February 12, 1930.

MR. GRAHAM,

Chairman Judiciary Committee,

House of Representatives, Washington, D. C.

MY DEAR MR. GRAHAM: After reading the inclosed article in the Pittsburgh Press and sincerely believing as you do in the liquor question I have taken the liberty of submitting to you a copy of a plan that I had entered in the Hearst campaign.

Having made a study of this question for the past few years my conclusions were that the public in general are loyal, fair and willing to cooperate, and 99 per cent are hoping that some plan, method or regulation can be found that will help them toward real temperance. You, as well as all thinking citizens know that you can not obtain total abstinence merely by making it a law. Regulations based on human psychology is the better way.

I am happy with the thought that some one had the interest of every citizen at heart to place the subject as you have before the public, and I for one thank you.

If you will be kind enough to give each paragraph of my plan a moment's consideration you will realize what a savings to the Government and to the citizens this plan will show from every angle.

On January 17, 1930, I sent a copy of this plan to President Hoover and the Treasury Department notified me that it had been handed to them for consideration.

If there is any way in which I can assist in bringing about some solution to this liquor situation I would be glad to cooperate, I beg to remain,

Sincerely, yours truly,

MYER COHN,

I believe that to obtain prohibition we must not prohibit, but must regulate. By regulating the liquors laws in a reasonable, tactful, far-seeing way and using common sense as its foundation we will undoubtedly have real temperance and temperance in its true sense is prohibition. A prohibition that will keep the respect for all laws and create a desire of every resident to uphold these laws. Bootlegging, lawlessness, and all corruption that is responsible to liquor will decrease to a minimum because it won't pay.

Therefore I most respectfully submit the following, which I shall name:

PROHIBITION REGULATIONS OF THE FEDERAL LIQUOR LAWS

1. Absolute control, by the Federal Government in every State and possession of the United States, of intoxicating liquors and beverages.

2. The manufacturing of intoxicating liquors and beverages shall be by Federal Government permit and under Government supervision in factories or buildings adapted to that purpose.

3. The Federal Government shall be the only agency for the sale of intoxicating liquors and beverages and shall regulate the quantities sold.

4. The Government will sell to any individual holding a license to purchase liquor and beverages, issued by the Federal Government, only at the dispensary where the permit is issued.

5. Original packages or purchases can not be opened or consumed while in transit from the Government dispensary to the home or what the Government shall construe as home.

6. An applicant for license who resides in a district 90 days or more will be considered a permanent resident and can only obtain a license from the dispensary in his home district, license being issued monthly, semiannually, or annually. The applicant shall pay the license fee.

7. The Government holds right to revoke any license or permit by notice at any time.

8. A special permit will be issued to every hospital for medical use and can only be issued in the name of and to the presiding officer or head of that institution, he being held personally responsible for the faithful performance and use of the permit at all times.

9. A permit is required to serve intoxicating liquor or beverages for any private affair where there are 50 or more guests. The host or hostess must be holder of a license.

10. A license can only be issued to an individual, who must be over 21 years of age, a permanent resident of the district against whom no objection is filed. A noncitizen can procure a license by being vouched for by a citizen who holds a license or is eligible for one.

11. Any member of the Army or Navy or airplane division, any police officer or fireman, school employee, pilot, driver or operator of any public conveyance, not eligible.

12. A permit will not be issued to serve intoxicating liquors or beverages for any public affair or what the Government shall classify as such.

13. When an objection is filed it must be disposed of within 90 days; during that period no license can be issued to applicant and any existing license shall be revoked.

14. Children residing at home, regardless of their age, can not obtain a license if either parent objects.

15. The presiding officer of a Government dispensary shall—for his district only—preside at hearings, render decisions, regulate quantities, all in accordance with the Federal liquor laws.

16. Doctors can obtain a permit to issue prescriptions for liquor and beverages in cases of actual sickness only. Where the patient holds a license or is eligible for one, a prescription is not necessary. Prescriptions will only be honored at Government dispensary in the district in which the patient is ill.

17. Druggists can obtain a permit to buy alcohol or liquor to be used only as one of the ingredients in filling a prescription or compounds, accounting of which must be rendered to the Government dispensary in their district.

18. Manufacturers of medicines and various compounds can obtain a permit to buy alcohol and liquor when same is needed as one of the ingredients, accounting of which must be rendered to the Government dispensary in their district.

19. Intoxicating liquors or beverages can not be given as gifts; serving it in the license holder's home shall not be considered as a gift.

20. Intoxicating liquor and beverages can not be transported from the home of the license holder without a permit.

21. The Government should use every known method of publicity to reach the entire public regarding its laws and regulations. The more publicity, the quicker and better results.

22. The punishment for breaking any of the liquor laws or its regulations should always be a jail sentence with or without fines.

If I were permitted more words to illustrate the cause and effect of each suggestion above, based on human psychology, public opinion, and legitimate home consumption, it would demonstrate how easily temperance can be obtained and eventually actual prohibition.

I dedicate this, my prohibition regulation of Federal liquor laws, to every believer of true prohibition, to all temperate, law-abiding citizens, and every parent who has the welfare of their children at heart, and finally to Mr. Hearst, who is to be applauded for this magnificent and timely opportunity to bring out and give publicity to the yearnings of its citizens for common sense laws.

Very respectfully yours,

MYER COHN.

PITTSBURGH, PA.

STATEMENT BY JOSEPH BATTAGLIA

Ladies and gentlemen of the House's audience, let us all bear in our minds that the Constitution of the United States is the genuine framework of our good Government. It was sincerely built with the best material and is no place for sumptuary laws such as the eighteenth amendment which unfortunately was enacted in such a time when the people could not foresee the consequences. And now after 10 years of deplorable conditions the people find themselves unable to repeal it.

Notwithstanding the impossibilities, something worth while can be effected, if the drys will listen to the facts and be reasonable.

Unquestionably all the laws must be respected, good laws must be obeyed, and the cloudy atmosphere of our Congress should be clarified.

Let me point to you that no one in our Congress can frankly say, "I am dry, I voted dry, and the people that I represent are 100 per cent dry."

In view of the facts, it seems to me that the dry majority of our Congress is not sufficient to prove that the majority of our people are not wet.

In my opinion the majority of our people, now and then all take a drink and are wet.

If my judgment is correct, the majority of our people have no justice.

When the minority predominates and rules over the majority in a civilized Nation like ours, then, there is a reason to suspect that something is wrong with the law and not with the people. Therefore, it is within the rights of every American citizen to convey the facts before Congress for consideration.

Statistics and figures published in the press trying to convince the people that the consumption of alcoholic beverages has diminished considerably in the United States since the prohibition law went in force are imaginary, not real.

When we take into consideration all the denatured alcohol that has been converted into alcoholic beverages, all the liquor that has been smuggled into the United States, all the liquor that has been supplied by the illicit stills operated by bootleggers, all the liquor that has been produced by baby stills operated in private houses for home use, all the liquor that has been manufactured from raisins, berries, dry fruit, hops, malt, and dandelion flowers with the addition of yeast, sugar, and water, all the cider and applejack and all the wine that has been manufactured from the enormous production of grapes which annually increases in quantity, we can easily say that in the last 10 years the production and consumption of alcoholic beverages in the United States has been improved immensely in quantity but not in quality.

Now let me ask you where is the benefits of the 10 years of prohibition experiment.

Have the people of the United States become temperate yet?

Have deaths due to alcoholism been reduced?

Have our people become more obedient to our laws?

Have congestions of our courts and penitentiaries been reduced since?

What classes of people have been most benefited by prohibition?

Has our Government received any benefit by prohibition?

Has prohibition reduced corruption, crime, bribery, profiteering, hypocrisy, and fanaticism?

I should say not; the unreasonable prohibition has created a national bootlegging business destructive to the welfare of our country and to the principles of our society.

Unless this predominating force changes view, we all will be compelled to march back, back, far back into the dark age.

Prohibition is absolutely unenforceable by any means. The natural laws of demand and supply tell you that. Where there is a demand there is a supply and we can never get away from that.

One result of prohibition so far is the creation of a filthy, political, money-making business repugnant to every honest and sensible person of the United States.

However, no man was created perfect; he makes mistakes, nations too; and, while we are in time to check future danger, it is the duty of our Congress to find a remedy.

A sensible substitution plan for prohibition to promote temperance by violation and respect for law is most essential for the welfare of our country and for the liberty of our people.

No matter how poor is my capacity, I have been working for some time on the subject and here is my contribution.

A booklet entitled "Logical Definition of the National Prohibition Act and Substitution Plan Offered to Congress," copies of which accompanied with long letters have recently been mailed to the President, Vice President, Treasury Department, United States Supreme Court, every Senator, every Representative, every governor, every district attorney, every district judge, best institutions, and to some personalities of the United States.

This publication and previous ones are well known all over the United States from coast to coast, and have been commented on by best authorities.

I have received a quantity of most encouraging letters and I am thoroughly convinced that the majority of our people are in favor of some modification.

A reasonable modification could be obtained without repealing the eighteenth amendment or disturbing the Volstead Act and Jones law, if Congress would accept this contribution.

If adopted, my plan would save the Government about \$1,000,000,000 a year; it would eliminate bootlegging, prevent unnecessary poisoning and the slaughter of thousands of persons annually, release congestion of courts and prisons alike, and restore our people to normalcy.

The principles of the plan are sincerely educational and for the benefit of all, but to obtain the desired result is beyond the reach of my capacity without an action of Congress.

Therefore, it is my extreme desire that the definition and the substitution plan in my booklet will be introduced in Congress; and upon this occasion in behalf of the people I ask the House's consent to order them printed in the official proceedings for consideration.

JOSEPH BATTAGLIA.

NEW YORK. N. Y.

LOGICAL DEFINITION OF THE NATIONAL PROHIBITION ACT AND SUBSTITUTION PLAN OFFERED TO CONGRESS

(By Joseph Battaglia, 90 West Street, New York, N. Y.)

INTRODUCTION

To the Congress of the United States of America:

I herewith submit my logical definition of the national prohibition act and my substitution plan for the welfare of this country, the United States of America, of which I am proud to be a citizen.

Without prejudice I call the attention of our public servants to the political view of the eighteenth amendment and its enforcement, which not only has demoralized respect for the law and deprived our people of their liberties for the last 10 years, but has also created trouble in all directions, unrest our Nation, loss to our Government, and has invited the criticism of the tire world toward us. Therefore, it is their duty to evolve a workable plan

to substitute for prohibition in order to eradicate the evil industry of alcoholic bootlegging in this country and to reform the involved elements with which it works, such as politics, religion, fanaticism, hypocrisy, poison, crime, bribery, profiteering, etc., and to establish sobriety among our people, to restore peace in our Nation, to reinstate obedience to our law, to redeem liberties for our people, and to relieve our Government of the heavy burdens, etc.

I am confident that the acceptance of my logical definition and the adoption of my substitution plan will accomplish the desired result and will receive the approval of Congress and be drafted into law.

LOGICAL DEFINITION

In the name of God and for the peace of the Nation the true administration of justice is the firmest pillar of our good Government, which gives light for the people to find their way, and for which I invite you to read this little book.

For the last 10 years the people of the United States have been living in the dark of the Volstead Act (the national prohibition act) which was drawn to enforce the eighteenth amendment. The lack of a clear interpretation of the words "intoxicating liquor" has created numerous obstacles for the true administration of justice.

Necessity is the mother of all inventions, Divine Providence gives us what we need, and philosophy is the key to all subjects.

The word "intoxicating" is philological and requires a scientific search to establish its true meaning.

Greek was the language used by the Greeks over two thousand years ago, and Latin was the language used by the Romans also over two thousand years ago, and both languages are in existence to-day.

The word "taxa," a species of tree from which the barbarians poisoned their arrows, was introduced into Greek and into Latin as "toxicum," signifying poison.

Modern languages such as Italian, Spanish, French, and other languages derived from Greek and Latin, still maintain its meaning of poison.

The English language, which is not so rich in Greek and Latin, yet defies it as poison; if you examine the definitions of the word "toxicology" in our American Webster Dictionary, you will find the same meaning.

Therefore, the word "intoxicate," in reality, means to poison; the word "intoxicated" means poisoned; the word "intoxication" means the state of being poisoned, gradually increasing to delirium with imperfect articulation and inability to regulate voluntary motion, which finally passes into unconsciousness and coma from the effect of the poisons.

The words "intoxicating liquor" mean "toxicological liquor," in plain language, poisonous liquor or liquor containing poison, such as wood alcohol or any alcoholic beverages containing poison and tending to intoxicate.

Do not let yourself be carried away from this logical and unalienable point and become confused with any other incorrect definitions of some dictionaries, especially of those printed lately under the influence of political ties, which define the words "intoxicate" and "inebriate" on the same basis, while the difference between these two words is as great as the difference between day and night.

"Inebriate," when used in conjunction with liquors or alcoholic beverages, means to make drunk or to disorder the senses. "Inebriated" means drunken or saturated with liquor. "Inebriation" means drunkenness or inebriety. "Inebriates" means drunkards. "Inebriating liquor" means liquor tending to make drunk and tipsy if taken in excess.

In my opinion the Volstead Act applies to the "poisonous liquors" only and not otherwise. The penalties prescribed by the Volstead Act and the increase of penalty under the Jones law are just and mighty safeguards for the public's health, when rightly applied. And I herewith respectfully submit my logical point and my opinion of the Volstead Act to the intelligent people of the United States, for the Supreme Court to pass on the merits of said facts and for the Congress to clarify the meaning of said act.

SUBSTITUTION PLAN

In setting forth this practicable plan in substitution for prohibition to secure temperance, I must first classify by volume all the alcoholics, and then provide rules and regulations for the same.

Class A shall consist of all pure and standard alcohols.

Class B shall consist of all medicinal tonics containing more than 14 per cent alcohol.

Class C shall consist of all liquors containing 36 to 50 per cent alcohol; such as brandies, whiskies, rums, gins, etc.

Class D shall consist of all cordials containing 22 to 36 per cent alcohol; such as apricot brandy, benedictine, maraschino, creme de menthe, etc.

Class E shall consist of all fortified wines containing 14 to 22 per cent alcohol; such as champagnes, red and white wines, sherries, port, madeira, etc.

Class F shall consist of all naturally fermented wines from pure grape juices containing 11 to 14 per cent alcohol, and of other fruit juices and apple cider containing 8 to 11 per cent alcohol, and ale containing 5 to 8 per cent alcohol, and beer containing $3\frac{1}{2}$ to 5 per cent alcohol.

1. Production, importation, exportation, distribution and prices of class A shall be strictly controlled and regulated by the Government. Same may be sold to American citizens, licensed and approved by the Government, for medical, chemical and industrial purposes. Producers, importers and exporters of this class may be appointed by the Government, and shall comply with all requirements which our Government deems to be necessary.

2. Production, importation, exportation and distribution of class B shall be controlled and regulated by the Government. Said class shall be handled by licensed druggists approved by the Government for medicinal purposes only.

3. Production, importation, exportation, distribution, and prices of classes C, D, and E shall be strictly controlled and regulated by the Government. Said classes shall be entrusted to so-called wine-liquor merchants for distribution in the original bottles as received, with additional stamps of inspection and approval by the Government authorizing sale. Said merchants must be responsible American citizens, licensed and authorized by the Government to handle said classes, having warehouses of capacity in locations and in manner approved by the Government and shall be equipped to fulfill and deliver orders of classes C, D, and E for medical, festival, and social purposes, respectively; and also shall be sole buyers from producers and sole importers of said classes. Producers must be American citizens, licensed and authorized by the Government to make or manufacture liquors of said classes; and shall bottle, seal, and trade-mark all the product which they dispose of to the wine-liquor merchants for distribution in this country, and must guarantee the contents of each and every one of their bottles, and also shall be sole exporters of their own production. Same will be obtainable by and for any person or persons entitled to make decent use of them, only on special permits granted by the Government for limited quantities. Applications for permits must be made on blanks furnished by the Government subject to all conditions printed thereon. Exceptions will be provided for hospitals, medical institutions, dispensaries, drug stores, institutions, for special occasions, and for all medical purposes approved by the Government.

4. The will of God is absolute and unalterable. Fermentation is God's will and a natural process and is beyond control of our law; therefore, be it resolved that class F be freed for our people to enjoy their liberties, and by drinking these harmless beverages within a generation the people of this Nation will become temperate, obedient to our law, with better health and more vigorous to maintain, protect, and defend our great Republic with honor and success. The fact that alcoholic drinks taken in moderation are best tonics for human beings is conclusive. Nevertheless, while this class is set free for home making and private use, still it remains under Government control for commercial and public use. Producers, importers, exporters, and dealers of class F must be American citizens, licensed accordingly, and shall bottle, seal, and trade-mark all the product which they dispose of for consumption in this country, and shall guarantee the contents of each and every one of their bottles, and place on every bottle governmental stamps of inspection and approval of the same. Wholesalers and retailers of said class must be American citizens, licensed for the purpose of distributing and serving their product respectively, in the original bottles as received. Institutions, clubs, hotels, restaurants, and lunch houses shall be considered retailers.

5. Offenders shall not be deprived of their constitutional rights; excessive balls shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; nothing but logical and impartial justice shall be administered.

COMMENTS

The accurate classification of all alcohols in my plan is the only basis upon which a practicable plan can be drawn for the promotion of true temperance, under present conditions in this country. And the alcoholic percentages of all liquors and beverages are long-balanced bases for each and every one of them, as closely as possible, customary in all civilized nations of the world.

No. 1 represents class A and deals with pure and standard alcohols as per governmental standards. Alcohol is the prime product essentially used for the manufacture of liquors and tonics, and for medical, chemical, and industrial purposes; therefore, it is necessary for the Government to have full control of it under present conditions.

No. 2 represents class B and deals with all medicinal tonics containing more than 14 per cent alcohol; and it is necessary for the Government to control said tonics under present conditions. Regarding the lack of limitation of alcoholic content in manufacturing tonics, at the present time some tonics contain more alcohol than ordinary whisky and some people use them in place of hard liquors. A tonic can be manufactured with alcoholic content as high as desired, with medicinals agreeable to the taste, obtainable everywhere, and can be used in place of whisky, brandy, rum, etc.

No. 3 represents classes C, D, and E, and deals with all hard liquors, with all cordials, and with all fortified wines for medicinal, festival, and social purposes, respectively. And, in order to promote true temperance, said classes shall be controlled by the Government in manner and as per rules described under said number, and subject to all conditions contained in the application blanks for permits, furnished by the Government.

No. 4 represents class F and deals with all naturally fermented beverages, balanced with reasonable limitation of alcoholic contents, in order to maintain customary bases; and with all necessary rules for the same, to promote real temperance.

No. 5 simply reminds us of the constitutionalities accorded to the offenders of the Volstead Act and the Jones law, when subjected under the too severe penalties imposed upon them by said acts.

Kindly take notice that we are living in one of the richest countries of the world, not only in minerals and resources, but in possessions. We have the State of California which is one of the best grape and fruit producing countries of the world, and we have other States capable of supplying the entire world with grain and corn; then, why should we be deprived of enjoying a glass of wine or beer with our meals when the Holy, Mighty God has provided us with such harmless beverages for us to drink?

My honorable reader, let me ask you one vital question for my conclusion: If Congress define the words "intoxicating liquor" as "all poisonous liquors," or "liquors containing poison," and accept my plan as a temperance substitute, will it, in your opinion, promote temperance and respect for law? If it will, then it needs your support.

JOSEPH BATTAGLIA.

A PLAN FOR TRUE TEMPERANCE

I. THE QUESTION

Ten years ago our people made the mistake of forgetting that society is a growth in time and that social reform is an evolution and not a revolution. Our Government, forgetting that it can only judge conduct, sought to regulate it. To-day we find a looser morale among our young people and a growing disrespect for law among old and young alike; we find a breakdown of justice and an increase in crime and delinquency. Prohibition changed nothing but the sources of liquor. The question is, what shall we do about it?

II. THE ANSWER

We must not say to the people, "You can have no liquor," for it is impossible to prevent them from doing what they consider not wrong. The plan we must follow to secure true temperance is twofold. It is educational, which necessarily must extend over a long period of time, and legislative, which may be enacted without delay.

EDUCATIONAL

The youth of to-day is the citizen of to-morrow. Their welfare should be the immediate concern of the country for with them lies its future.

(1) The parents' part: The education of children lies, to a large extent, in the home, where it is the object of the family to mold the individual into right ways of living and to form him in the faiths of religion, practice of morality, and obedience. Parents, therefore, should see that their children attend Sunday school and church. Every boy should be encouraged to become a boy scout and every girl a girl scout. They should be taught disgust for the spectacle of a drunkard as being the lowest level to which human beings sink. Parents should encourage and participate in athletics with their children.

(2) The Government's part: The Government should create a department of education and public health. This department should be as important as any of the other departments and should be represented in their joint councils. On this question it should concern itself with the teaching and education not only of children but of adults. The results that could be obtained through this agency for the betterment of our people, are unlimited. The Government, by the legitimate means of public discussion and education, could thoroughly instruct us why the excessive drinking of liquor is harmful and could thereby discourage its consumption.

LEGISLATIVE

Liberty fixed in unalterable law is no liberty at all. The law replacing the prohibition statutes must be a law of moderation that will not be the result of any particular group or be connected with any special interests. We should not again make the mistake of hysterical reform. The law should incorporate among other things:

(1) What shall be sold? (a) The free sale and consumption of light wines and beer.

Discussion: There can be no objection to these as being harmful when they are advocated by many responsible men and when one considers that French and German children are virtually reared on them.

(b) Restrictions in sales of whisky and "hard" liquors in amounts less than two quarts.

Discussion: Since the consumption of "hard" liquors can not be stopped, their sale shouldn't be prohibited as the bootlegger and moonshiner will continue in operation and those are two characters we are trying to banish from our communities. We should also be free from poisonous liquors. If the sale of these liquors is prohibited in amounts less than two quarts and the price graduated this will tend to promote more occasional buying and less everybody buying and will increase the consumption of the less harmful wines and beers.

(2) Where they shall be sold? (a) Liquors shall be sold in governmental agencies operated and controlled by the Federal Government.

Discussion: Obviously the sale of liquors must be either by the Government or by private individuals. We don't want the return of saloons yet there seems to be a prejudice against the Government going into business. This prejudice is caused by the fear of the Government being in competition with its citizens but inasmuch as there are no citizens lawfully engaged in the liquor business this prejudice has no foundation. I favor governmental agencies, operated and controlled by the Federal Government for the sale of these liquors.

(b) The drinking of of any liquors at the place of sale is forbidden and all drinking parlors shall be prohibited.

Discussion: This would remove the greatest evil of the old-time saloon. Men could not squander their wages in drink. They could buy the whisky to drink on the outside but note article 4.

(3) Who they shall not be sold to? (a) The sale of intoxicating liquors at these agencies to minors and intoxicated persons shall be prohibited.

Discussion: This should be part of any liquor law.

(4) Penalties: (a) Imprisonment or a fine or both is to be levied for public drunkenness and for unlawfully selling or engaging in the liquor business.

Discussion: If the Government would spend half as much time in imprisoning or fining drunken people as it does now in futility trying to prevent them from getting drunk we would have more genuine temperance. Enforcement could be undertaken by the local police and Federal enforcement officers would

be unnecessary.

III. THE METHOD

Nullification of the eighteenth amendment is not facing the issue. Stretching the definition of nonintoxicating liquors is hypocritical and un-American. Nothing but repeal will do. The people must be consulted by a referendum and their views ascertained through the ballot box. State legislatures will not then dare contravene public opinion. Article V of the Constitution now gives us our method, "The Congress * * * on the application of the legislatures of two-thirds of the several States (32), shall call a convention for proposing amendments, which shall be valid to all intents and purposes as a part of this Constitution when ratified by conventions in three-fourths of the States * * *."

"We must not depend upon Congress for amendment. It was Roosevelt who said, "I believe in the initiative and the referendum, which should be used, not to destroy representative government, but to correct it whenever it becomes misrepresentative."

JAMES H. FOLSOM.

CHICAGO, ILL.

BRIEF OF A. W. LAFFERTY, NEW YORK CITY, FAVORING STATE'S RIGHTS AND STATE CONTROL OVER MEDICAL LIQUOR

Mr. Chairman and members of the committee, the following measure is proposed:

A BILL To modify the national prohibition laws

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act no person shall be prosecuted, convicted, or punished under any law of the United States for possessing in his home, or residence, or transporting to his home or residence intoxicating liquors for medical purposes, purchased by him in good faith for medical use, in accordance with the law of the State wherein his home or residence is located, provided such State law shall comply fully with the Constitution of the United States, and particularly with the eighteenth amendment.

SEC. 2. That the officials of the United States charged with the administration of the prohibition laws are hereby empowered to make suitable rules and regulations to the end that dealers within a State, duly authorized pursuant to a law of such State, which shall fully comply with the Constitution of the United States, and particularly with the eighteenth amendment, to dispense and sell intoxicating liquors for medical purposes within such State, for consumption only in such State, shall be lawfully supplied with pure liquor stocks for such medicinal dispensation and sales.

Good reasons crowd one upon the other for the belief that the law here proposed would answer the riddle of prohibition.

The proposal goes to the root of an obvious error that has been committed.

The eighteenth amendment neither prohibited liquor for medical purposes nor did it take away from the States their exclusive power over medicinal liquors.

Every common-sense drink of liquor consumed in the home is taken temperately, for health's sake, which is a medical use.

Alcoholic liquors are the most potent tonic the human race has ever known, and they have been used as a tonic since the dawn of civilization.

When the American people, in 1919, actuated by the highest motives of human welfare and national progress, decided to forever outlaw intoxicating liquors for beverage purposes—that is, for the mere sake of drinking—they did not surrender the right to have ample liquors in the home for medical use.

The Volstead Act misinterpreted the eighteenth amendment, usurped the power of the States over medical liquor, and thereby created the present irritation, unrest, and dissatisfaction.

The simple recognition by the Federal Government of the right of States to regulate medical liquor, a right which has never been surrendered by the States to the Washington Government, would solve this troublesome question.

Such recognition, which is demanded by the oath of every Senator and Congressman, would permit the States that desire to be medically dry to so provide by their own legislative decree and it would permit those States that desire to allow liquors for medical purposes to do so in like manner.

The tenth amendment to our Constitution (which might still be well called our Articles of Confederation) provides that all powers not expressly granted to Congress are reserved in the States.

No power has ever been given to Congress to prohibit liquors for medical purposes.

No power has ever been given to Congress to legislate at all on the subject of medical liquors.

Congress was given power by the eighteenth amendment to prohibit liquors for beverage purposes.

With a view to carrying out that granted power Congress has also, to all intents and purposes, prohibited liquors for medical purposes, thereby not only exceeding the power conferred upon Congress by the eighteenth amendment but transgressing a field of legislation reserved exclusively to the States by the Constitution, which every Senator and Congressman has sworn to support and defend.

A "FRAUD" UPON THE CONSTITUTION

Such transgression by Congress has been denominated a "fraud" upon the Constitution by four justices of the Supreme Court of the United States, in *Lambert v. Yellowley* (272 U. S. 602), in the following sentence:

"Congressional legislation directly prohibiting intoxicating liquors for concededly medical purposes, therefore, does not consist with the letter and spirit of the Constitution, and viewed as a means of carrying into effect the granted power is in fraud of that instrument, and especially of the tenth amendment."

The foregoing declaration was written by Mr. Justice Sutherland, recognized as the greatest constitutional lawyer on the Supreme Bench.

It was concurred in by Mr. Justice McReynolds, who was Attorney General under Wilson.

It was concurred in by Mr. Justice Butler.

It was concurred in by Mr. Justice Stone, whom Mr. Hoover wanted first for his Attorney General, and next for chairman of the Law Enforcement Commission.

The New York Times of February 15, 1930, stated that the Anti-Saloon League wrote the Volstead Act. Whether it did or not, it strongly advocated it.

Those who prohibited liquors for medical purposes by the Volstead act went beyond the Constitution in order to carry out a personal belief.

Those who dictated the Volstead act believed that liquors should be prohibited, if possible, for all purposes.

Probably they honestly believed that the restrictions which they placed in the Volstead act concerning the use of medical liquors, which, for all practical purposes, prohibited liquors for medical purposes, were justified when "viewed as a means of carrying into effect the granted power." But, when so viewed, four justices of the Supreme Court say, such prohibition of the use of liquors for concededly medical purposes is a fraud upon the Constitution.

Although the opinion just quoted was a minority opinion, it is worthy of observation that the majority opinion made no effort to answer the constitutional argument of the minority.

It is likewise worthy of observation that Senators and Congressmen must stand upon their own oaths to support and defend the Constitution of the United States, and when the tenth amendment stares them squarely in the face and proclaims that all powers not expressly granted to Congress are reserved in the States, they should obey that constitutional mandate no matter what anyone else may have to say about it.

LOCAL SELF-GOVERNMENT SAFEGUARDED

What is the object of the tenth amendment?

The obvious purpose is to keep all government as close to the people as possible, to promote self-government, and to discourage government from afar.

State officers are just as important as Federal officers. They are all elected the same day, by the same electors, who mark the State and Federal ballots with the same lead pencils.

The writer was raised in a back township of Pike County, Mo., and may draw upon his own observation as to the thoughts and daily life of provincial

Americans, and their partiality for home rule and local self-government, wherever that is possible.

For example, any of my old neighbors were at once desperate if called upon to face a Federal criminal accusation of any kind. There was a common belief that anyone dragged off to the Federal court in St. Louis, and tried by strangers, was sure to be convicted, innocent or guilty.

Besides, these country people realized that when they made some slip and were called on for trial in the local courts the jury would give them the benefit of all the good they had ever done society, and strike a sort of balance when it came to judge them under the local law.

For those reasons the people of Missouri felt then, and I believe the people of the back townships of America feel to-day, that for misdemeanors they should always be tried by their own peers in their own localities, and under the laws of their own States.

When a simple countryman is called upon to face a Federal investigator, on a charge of having liquor in his home, and is threatened with separation from his family and friends, and a trial by an alien judge and an alien jury in distant parts, he becomes desperate, and he becomes dangerous.

By the Volstead Act, Congress has said to the States, as regards medical liquor, "This is our command; the States shall obey."

The States are given absolutely no voice, absolutely no choice of any kind, except meekly to obey the fiat of the Volstead Act, which, in practice, prohibits liquors in the home for medical purposes by act of Congress, thereby violating the tenth amendment to the Constitution.

WILSON'S VETO VINDICATED

Wilson vetoed the Volstead Act and requested Congress to rewrite it at the very beginning. Congress overrode Wilson's veto with great gusto, and sowed to the wind. The country is now reaping the whirlwind. Wilson said:

"In all matters having to do with the personal habits and customs of large numbers of our people we must be certain that the established processes of legal change are followed. In no other way can the salutary object sought to be accomplished by great reforms of this character be made permanent and satisfactory."

Mr. Hoover in his inaugural address announced that "large numbers of law-abiding citizens" were patronizing the illegal traffic, meaning patronage of the bootleggers. That is the very thing Wilson sought to circumvent when he asked Congress to rewrite the Volstead Act so as to comply with American traditions.

January 20, 1924, just two weeks before he died, Wilson made a final appeal for State's rights as regards prohibition in identic letters sent to Senator Carter Glass, Hon. Josephus Daniels, and others, in which Wilson asked that a plank be offered at the ensuing National Democratic Convention containing these words:

"There should be frank recognition of the fact that the prime duty of the Federal Government is to protect the country against illegal importation from abroad and from illegal introduction of liquor from one State into another, that the full performance of this duty will tax the resources of the Federal Government to the uttermost, and that for the rest the people of each State must look to their State government. But the eighteenth amendment should remain unchanged. And the Volstead Act should remain unchanged."

In the same plank, speaking of the right of the States to control enforcement within the States, Wilson asked to have his party declare:

"It is a task for which the Federal Government is not fitted. To relieve the States from the duty of performing it violates our traditions and threatens the best interests of our country. The strength of the Nation and its capacity for achievement is in large measure due to the Federal system with its distribution of powers and duties."

SUPREME COURT DIVIDED

If any partisans now believe that prohibition is finally settled by the Volstead Act, with the seal of approval of the Supreme Court upon it, it is very certain that the Supreme Court itself does not regard the problem as settled by any means.

In the first of the prohibition cases (253 U. S. 392), Mr. Justice McReynolds, although assenting to the rulings made in those particular cases, wrote the following statement for the record:

"It is impossible to say with fair certainty what construction should be given to the eighteenth amendment. Because of the bewilderment which it creates, a multitude of questions will inevitably arise and demand solution here. In the circumstances, I prefer to remain free to consider these questions when they arrive."

Chief Justice White regretted that the court had merely made rulings without giving any formal opinion, or any reason for its rulings.

Mr. Justice Clarke dissented.

Mr. Justice McKenna, a former member of Congress from California, and for many years one of the ablest men on the Supreme Bench, dissented, and said:

"The court declares conclusions only, without giving any reasons for them. The instance may be wise—establishing a precedent now, hereafter wisely to be imitated. It will undoubtedly decrease the literature of the court if it does not increase lucidity. * * *

"This construction of section 2 (of the eighteenth amendment) is enforced by other considerations. If the supremacy of Congress had been intended, it would have been directly declared as in the thirteenth, fourteenth and fifteenth amendments. And such was the condition when the amendment left the Senate. The precedent of preceding amendments was followed; there was a single declaration of jurisdiction in Congress.

"Section 2 was amended in the House upon recommendation of the Judiciary Committee, and the provision giving concurrent power to Congress and to the States was necessarily estimated and intended to be additive of something. The Government's contention makes it practically an addition of nothing but words, in fact denuding it of function, making it a gift of impotence, not one of power to be exercised independently of Congress or concurrently with Congress, or, indeed, at all. * * *

"From these premises the deduction seems inevitable that there must be united action between the States and Congress, or, at any rate, concordant and harmonious action; and will not such action promote better the purpose of the amendment—will it not bring to the enforcement of prohibition the power of the States and the power of Congress, make all the instrumentalities of the States, its courts and officers, agencies of the enforcement, as well as the instrumentalities of the United States, its courts and officers, agencies of the enforcement? Will it not bring to the States as well, or preserve to them, a partial autonomy, satisfying, if you will, their prejudices, or better say, their predilections?—and it is not too much to say that our dual system of government is based upon them. And this predilection for self-government the eighteenth amendment regards and respects, and by doing so, sacrifices nothing of the policy of prohibition."

It is safe to say that Mr. Justice McKenna, now gone to his reward, wrote the above for posterity, knowing that in the years to come further legislation by Congress and the States would be necessary to work out prohibition successfully.

STATE POWER ALREADY EXISTS

The bill here proposed is but a gracious recognition on the part of Congress of an undoubted right which the States already have under the tenth amendment, and which the States could exercise in spite of Congress. But the States are respectful to Congress, and they recognize that all the States and the Federal Government are in a partnership, and the States hesitate to pass any legislation which might produce even the appearance of a clash of authority.

In that spirit Congress is asked to give serious consideration to its duties under the Constitution.

The proposed bill would not surrender one iota of power over medical liquors to the States, in any event, until the States had passed medical liquor laws of their own "complying fully with the Constitution of the United States, and particularly with the eighteenth amendment." Those words appear in the proposed act. Of course some of the words seem superfluous, to a lawyer, but a bill of such public moment will be read by laymen and lawyers alike, and it was purposely made doubly plain, on the point that the State law must pass muster before the Supreme Court as complying with the "Constitution of the United States, and particularly with the eighteenth amendment."

With the passage of this proposed law by Congress each State would feel perfectly free in every way to adopt its own medical liquor law, subject to the condition that its law must not violate the eighteenth amendment.

AMPLE MEDICAL LIQUORS WITHOUT ONEROUS RESTRICTIONS

Support of the Constitution is the first duty of every citizen. By an overwhelming majority this loyalty to our national charter is considered a patriotic privilege, a signal honor to be borne with sacrifice if need be.

Every Federal and State officer in the land takes a special oath to support and defend the Constitution. Every citizen by adoption takes the same oath. This obligation is the birthright of every native born.

The use of liquors for beverage purposes is against the Constitution.

The use of liquors for medical purposes is not against the Constitution.

A model State medical liquor law would permit every adult citizen, upon his own affidavit, to purchase pure beer, wines, and other liquors, for medical purposes, by the case, and to take the same home, there to be consumed from time to time in such use.

Such a State medical liquor law, of course, provide adequate criminal penalties for abuse of the State medical liquor privilege.

It is illogical to say that such a State law would evade the eighteenth amendment by affording an opportunity to the citizen to violate his oath and the law.

The millions of taxpayers who make annual returns to Nation and State also have opportunities to violate the law, but experience shows that very few do so.

The law presumes that the citizens will do right and not wrong. That maxim is based upon the experience of the centuries. If it were not so all law would be futile, and all governments would fail.

If the American taxpayers, who furnish the money to run the country, and to protect it against harm from within and without, and to pay its Congress and its legislatures, are good enough to be trusted on their own affidavits to make their income-tax returns they are good enough to be trusted on their own affidavits to obtain pure liquors by the case for use in their homes for medical purposes.

Imbibing liquors for the mere sake of drinking them, and use thereof for "treating purposes," and for conviviality, constituted the beverage use, encouraged by the saloon, which was forever outlawed by the eighteenth amendment.

What constitutes good faith medical use of liquors?

Obviously the answer is whenever they are consumed temperately for health's sake. Dozens of other household remedies repose to-day in the millions of medicine chests, and upon the mantels, of American homes. It would be just as illogical to charge the population with bad faith in the use of any of these remedies as it would be to say they want medical liquors for a purpose other than good faith medical use.

The right of the citizen, which has not been taken away by the eighteenth amendment, to have liquors for medical purposes, implies the concomitant right to have same in quantity, quality and variety suitable to such purposes, and that they shall be conveniently obtainable.

In so far as the Volstead Act abolishes the saloon, and prohibits traffic in liquor for beverage purposes, it is constitutional and a proper exercise by Congress of the power granted to it by the eighteenth amendment.

To the extent that the Volstead Act attempts to deal with liquors for medical purposes, and, in actual practice, to abolish the same, it invades a field of legislation which the Constitution reserves to each State to decide for itself.

Of course any State could very well, if it saw fit, require a doctor's certificate as a prerequisite to obtaining liquors for medical purposes, either in lieu of the purchaser's affidavit, or supplemental to the affidavit, and corroborating it.

That liquors may properly be used for medical purposes without a doctor's prescription is well illustrated by the fact that American merchant vessels even to-day, carrying small crews and no doctor, are nevertheless permitted to carry stocks of medical liquors, which are under the care of the captain, a layman.

The maritime regulations of England forbid a merchant vessel to clear her ports without medical liquor on board for the crew, even when the vessel carries no doctor to dispense it.

There can be no essential distinction between a captain of an American merchant vessel, with a crew of a half dozen men, being supplied with liquor for medical purposes, to be used as required, without a doctor's prescription, and

any head of an American family being permitted to have liquors in the home for the same purpose.

It is an old American custom. It is an ancient right. It is a right which was not taken away by the language or intent of the eighteenth amendment.

Many families on the ranches of Arizona, New Mexico, Colorado, Wyoming, Montana, and other western States go to the city to lay in supplies for the ranch every six months. Some of these are fighting the white plague. How ridiculous and absurd to require such invalids to travel, perhaps 50 miles and return, every 10 days to undergo a careful physical examination in order to get a pint of whisky?

The *Mayflower* carried medical liquors.

The fleet of Columbus carried medical liquors.

Medical liquors have a historical background and an established place in the life of a large portion of the citizens of America, and, except as to interstate commerce, commerce within strictly Federal territory, and international maritime jurisdiction, the sovereign States, under the tenth amendment to the Constitution, have exclusive control over medical liquors.

VOLSTEAD ACT, IN PRACTICE, PROHIBITS MEDICAL LIQUOR

That the Volstead Act does, in practice, prohibit liquors for medical purposes, is proved by the following provisions of that act:

1. To get a pint of whisky the citizen must leave his work for at least a half day and visit a physician holding a special Federal permit, and the citizen must pay the physician's fee, and must undergo a careful physical examination, to use the words of the Volstead Act.

2. The physician must find that the applicant is suffering from some specific disease, naming the ailment, and the physician must certify that he in good faith believes the use of such liquor, as a medicine by such person is necessary and will afford relief."

3. The physician must violate the confidence of his patient and emblazon the name of the patient's disease on the prescription to go to the local drug store, and a copy must go to Washington for the permanent Government record.

4. After the patient succeeds in getting the prescription, his troubles have only just begun. He must tramp over the town, or drive over the country, hunting for a drug store willing and able to fill his prescription. Most drug stores refuse to handle liquor stocks because of the harsh provisions of the Volstead Act upon druggists. For the same reasons most physicians decline to touch the prescriptions.

5. After the citizen finally gets his pint of whisky (or a bottle of wine, in the alternative) he must be careful to use it for his own individual use, and not to give a teaspoon of it to his child dying with the croup or to his father suffering from exhaustion or pneumonia, lest he be branded a felon. If his wife or any of his loved ones fall ill and need a stimulant, a registered Federal physician must be found and called in, or he must be visited, and many forms filled out for Washington, as not a teaspoonful of liquor prescribed for A can be given to A's wife or child without becoming a potential felon. No prescription may ever be refilled.

The above are only a few of the hardships of the Volstead Act which make it impossible, as a matter of practice, for the people to obtain medical liquors under it.

The family physician, in most instances, refuses to touch the Volstead blanks because he can not afford to subject himself to annoyance at any and all times by visits from Government agents who demand the right, and have the right under the Volstead Act, to call on the physician at all times and examine his private records.

The idea seems repulsive that a physician, who may be concentrating on saving the life of a patient who is desperately ill or on the technique of a delicate operation he is about to perform, should be subject to an inquisition by a Volstead agent who might desire only to inquire about a prescription for a pint of whisky.

Out of just pride for their profession, let it be said to their credit, most physicians refuse to touch the Volstead blanks.

Finally, the ultradrys will argue, all liquors are poison and unfit for medicine, and that any regulations which will diminish or even prohibit, in practice, all medical use, is a noble exercise of governmental power.

That contention, if made, is begging the question. The question is not whether liquors for medical purposes are wise or unwise. The sole question is whether liquors for medical purposes can be lawfully barred by Congress under the grant of power contained in the eighteenth amendment.

Congress admits it has no such power. Congress admits it only has power to prohibit for beverage purposes. But Congress, in passing the Volstead Act, evidently believed it could, with a view to carrying into effect the granted power, throw such restrictions around the acquirement of liquors for medical purposes as to virtually prohibit liquors for medical purposes, as a sort of necessary incident to the prohibition for beverage purposes.

That indirect prohibition of liquors for medical purposes has become an accomplished fact.

It was a "fraud" on the Constitution, to revert to the language of four justices of the Supreme Court of the United States.

The people of America are wrought up about it.

They want the Volstead Act purged of that "fraud," if it is a fraud.

Congress is now bound to decide that question for itself, and it can not lean on a divided opinion of the Supreme Court to escape its own responsibility.

DOCTORS WHO LAUD LIQUORS AS MEDICINE

In conclusion just a few of the medical authorities of the country are cited to prove that pure liquors are valuable as medical aids.

From the recent work *Temperance or Prohibition* the following quotations are taken:

By Dr. Paul W. Eaton, Washington, D. C.: "A mistaken view of the prohibitionists is that alcohol is a poison. Dr. Louis Pasteur, the best authority on such matters, said pure wine was the world's most healthful beverage. Dr. Adolph Lorenz, world-famous Vienna surgeon, said 'Alcohol in medicinal quantities is the best thing for the system.' Lord Dawson of Penn, physician to King George V of England, recently emphasized similar opinions. Most medical authorities agree about this."

By Dr. Samuel W. Lambert: "Alcohol is a sedative to reflex irritability; a dilator of the peripheral blood vessels, relieving strain on the heart muscle, and improving the circulation, though it is not a direct cardiac stimulant."

"It is a depressant to the central nervous system, for it permits rest and sleep and relieves thereby the sense of discomfort and restlessness due to disease."

"It stimulates the secretions of the salivary glands and the gastric juice; it improves the action of the stomach and upper intestine, and thereby especially improves digestion."

"Fermented liquors form a most useful tonic and food in convalescence from prolonged infections and from severe surgical procedures."

"Wines, in particular, contain other derivatives from the result of fermentation which can neither be quantitatively analyzed nor duplicated in synthetic manufacture."

"The taking of wine with a meal increases the desire for food and improves the nutrition. The wine itself requires no further digestion and is almost the only food product which will be absorbed from the stomach itself without further preparation or delay in its reaching the capillaries of the tissues."

"In the aged and in sufferers from chronic diseases alcohol is an appetizer and helps to digest other food."

By Dr. H. Lyons Hunt, president of the American Medical Authors' Association: "The undernourished should have alcoholic beverages prescribed for them in much larger quantities than physicians can now legally prescribe. Consider the convalescent patient who would recover his health by taking stout, malt extract, ale, beer, or wine with each meal. The physician is the best one to judge."

By Dr. Frederick Wellington Buck, Washington, D. C.: "There was more liquor in our homes in 1920 (due to people laying in supplies before prohibition) than any year in our history. All statistics, even those compiled by dry organization, prove that year to be the lowest on record for all crimes, including drunkenness. (For proof of fact see hearing on H. J. Res. 203.)"

"The above facts prove that the people can be trusted with liquor in their homes. Restore their rights and crime will immediately drop to the 1920 level and in time much lower."

CONCLUSION

It is not disputed that millions of American people desire to keep liquors in their homes for medical purposes, and there is nothing in the eighteenth amendment to say them nay.

The Volstead Act has overreached the amendment and should be curtailed in its operation by the bill here proposed or one of similar character.

The people did not think they were giving up the right to keep liquors in the medicine chest along with the other household remedies when they consented to the adoption of the eighteenth amendment, and, according to the tenth amendment, they did not, because no power was conferred on Congress to prohibit liquors for medical purposes.

Congress did, in effect, bring about such prohibition of liquors for medical purposes as is herein clearly shown, and it is up to Congress, as a matter of justice, speedily to rectify that error.

This is a duty of every individual Senator and Congressman to his constituents, regardless of whether he be a wet or a dry.

If Congress refuses to ratify its error, the only course left to the States is to defy the medical liquor restrictions of the Volstead Act and pass State laws in conflict therewith and let the Supreme Court decide the conflict between Congress and the States.

Respectfully submitted.

A. W. LAFFERTY.

COMMENTS ON FORMER RECENT BRIEF SUPPORTING THIS SAME PROPOSAL

"Thought provoking." (Alfred E. Clark.)

"Whether you have 'struck gold' or not, I do not know. You have, however, written an interesting paper and one worth thinking about." (John W. Davis.)

"I read it with interest." (Arthur Brisbane.)

"Will place it before the President." (Lawrence Richey.)

"Will endeavor to have copies distributed to Judiciary Committee." (George W. Norris.)

"Will look it over with great interest." (Pauline Sabin.)

"Shall give it careful study." (David I. Walsh.)

"You discuss a very difficult Constitutional proposition in the most clear and convincing manner." (Thomas E. Rhodes.)

"One of the clearest and most logical papers I have read in a long time." (Frank M. Patterson.)

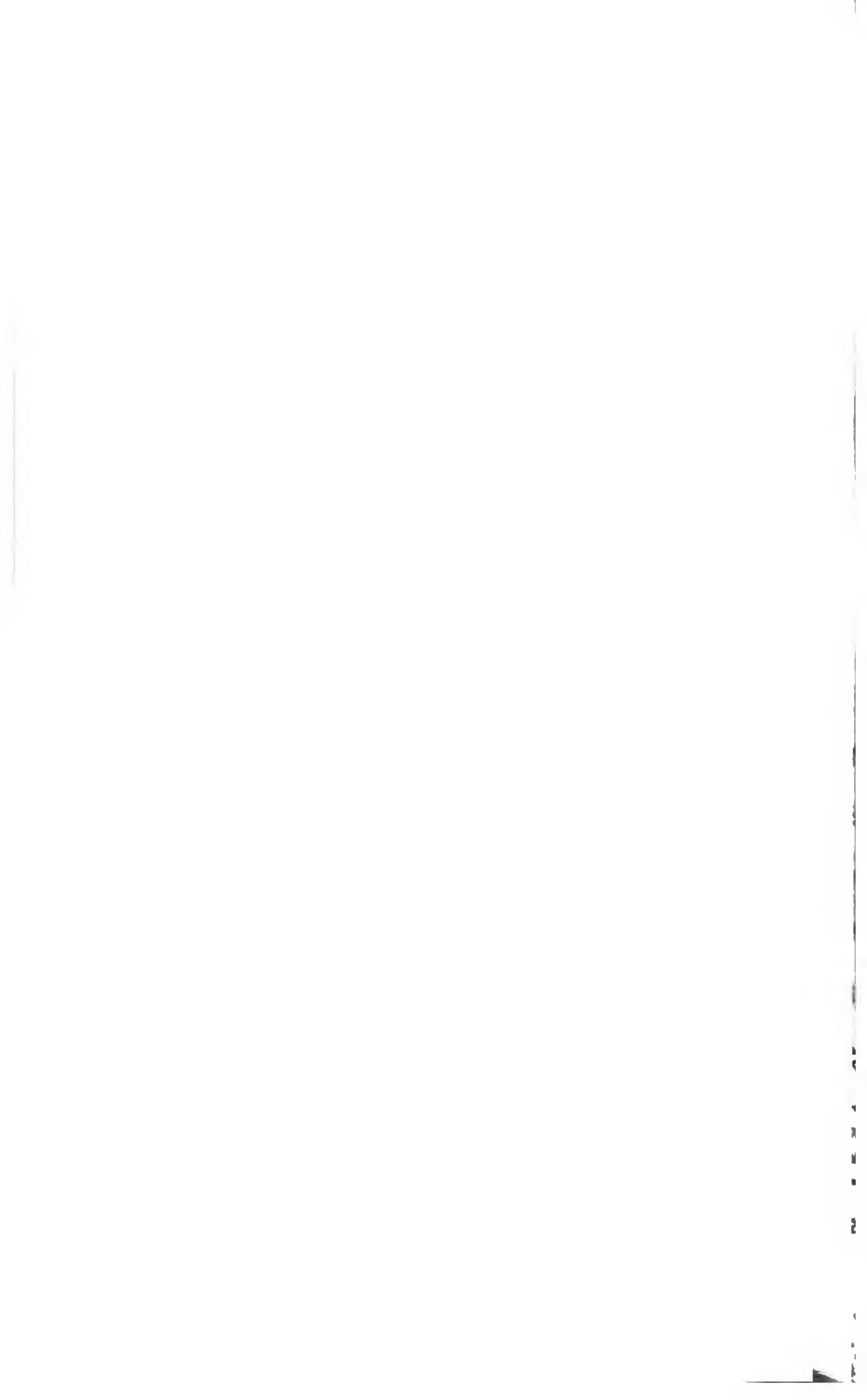
"Will read it over with care. Many thanks." (Alfred E. Smith.)

"Thank you for sending me the two interesting papers on 'the prohibition snarl.' I have read them with interest." (E. M. House.)

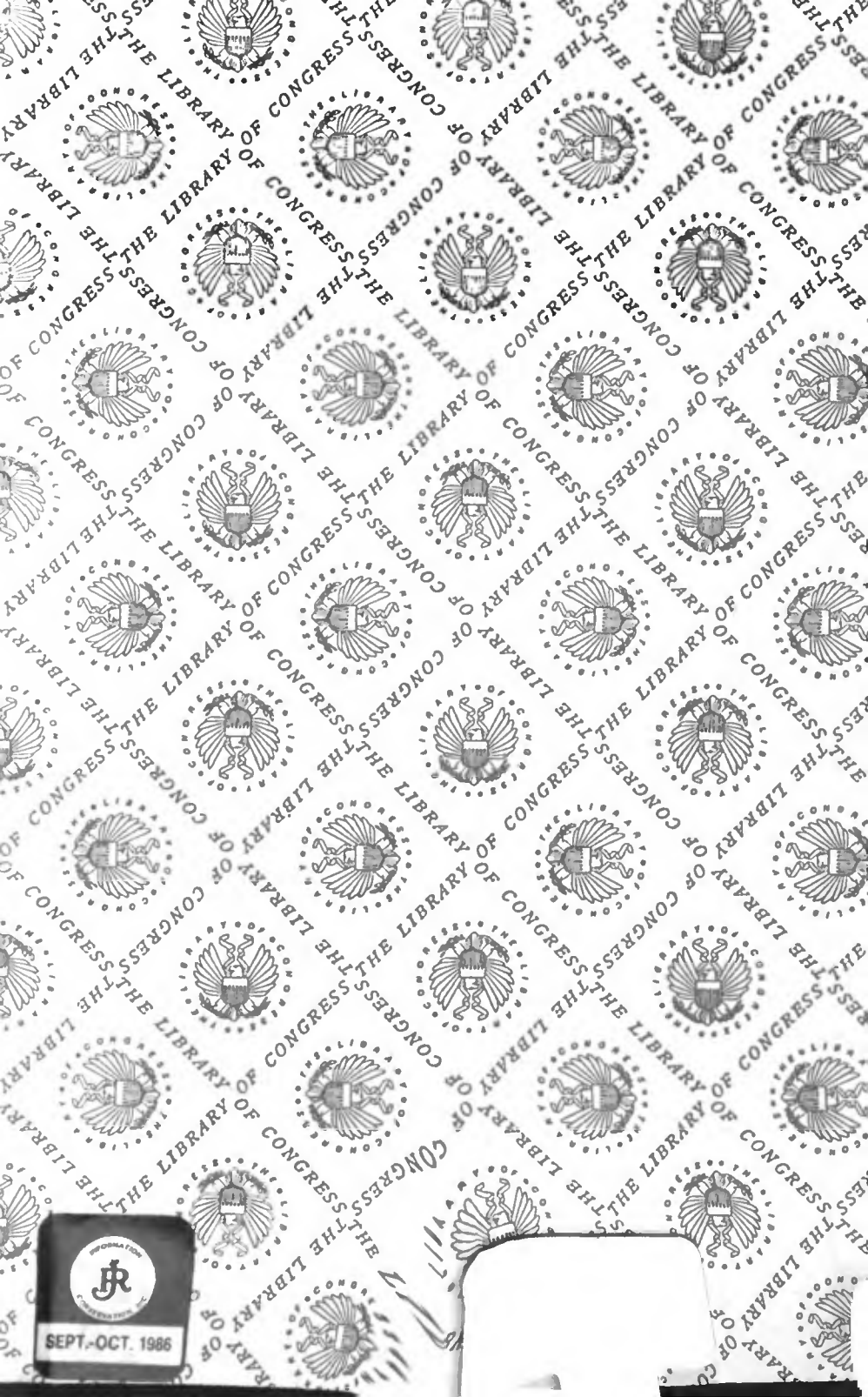
"I have requested the clerk of the Judiciary Committee to hand around to each member a copy of your 'Answer to the Riddle of Prohibition'." (Geo. S. Graham.)











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